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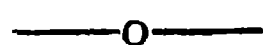
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LAW MAGAZINE AND REVIEW.

No. CCXLVI.—November, 1882.

I.—THE CONFLICT OF MARRIAGE LAWS.

MARRIAGE in its origin is a contract of Natural Law. It is the parent, not the child, of Civil Society. With the growth, however, of Civil Society, marriage has come to be regarded as something more than a mere contract, and it has been regulated by legislation in most countries, as if it were an institution of Civil Society, inasmuch as it is attended with important civil consequences, such, for instance, as the right of dower and the right of succession or inheritance. In Christian countries it has had the sanction of religion superadded to the civil contract. It then becomes a religious as well as a civil contract, and it would be a great mistake to suppose, to use the words of Lord Stowell, that because "it is the one, therefore it may not be the other." Further *ubi consensus, ibi matrimonium*, is the maxim of the ancient Canon Law, and there are still countries where the consent of the parties, expressed in words of present mutual acceptance, suffices to constitute an actual and legal marriage. Notwithstanding, however, that marriage in its origin was a consensual contract of a very simple character, there is hardly a transaction of life which takes place between persons of different nationalities, of which the obligation is so uncertain, unless definite preliminary formalities have been observed, which are not prescribed by the law of the place of contract, but by the

law of the domicile of the parties, and under the term domicile I include the native country of a party, where the indelibility of birth-obligation is maintained by it.

I propose on the present occasion to deal simply with the Conflict of Laws, as regards the contract of marriage, irrespective of the legal incidents of the contract. The attention of the National Association for the Promotion of Social Science was called to the subject at its Manchester Congress in 1879, when I had the honour of presiding over the Jurisprudence Department, and a paper on the same subject was read at the Dublin Congress of the same Association last year, by Dr. Neilson Hancock, Q.C. Further, the subject was brought to the attention of the Association for the Reform and Codification of the Law of Nations by Sir Robert Phillimore, Bart., its then President, in his Inaugural Address delivered in the Guildhall of the City of London, in 1879, in which he expressed his opinion that "the present international practice and law with respect to marriages of foreigners is a disgrace to Christendom." Further, Mr. J. G. Alexander brought the subject before the Conference of the Association at Berne, in 1880, in an able paper "On the International Bearing of Marriage Laws," and at the same Conference Dr. Tristram, Q.C., Judge of the Consistory Court of London, communicated a paper on Domicile as regulating Testamentary and Matrimonial Rights, and on that occasion it was resolved that a Committee should be appointed to consider the subject.

No action, however, has been taken to give effect to that resolution, but the Social Science Association has proceeded upon the suggestion which M. E. Clunet, Advocate of the Court of Appeal of Paris, made to the Berne Conference, that as a palliative to the condition of things described by Mr. Alexander, measures should be taken by the authorities of each country to give information to the

various ministers of religion, to the superintending registrars and so forth, as to the special requirements of Foreign Laws of marriage. This precaution has been adopted in England as far as the institutions of this country permit. The Registrar-General has circulated instructions to the Superintendent Registrars and other officers, who are authorized by statute to celebrate civil marriages, and the Social Science Association has drawn up a Memorandum as to French and Belgian Marriage Law, which it has submitted to the approval of the Archbishops of the Church of England for circulation amongst their clergy. So far I have good reason to affirm that although no Committee has been formed in accordance with the resolution of the Berne Conference, the subject has not been allowed to go to sleep, and it has seemed meanwhile to be unnecessary for the younger Association to move until the elder Association had completed the work which it had undertaken, and which it has so well discharged.

There is however, a branch of the subject which the Social Science Association has not touched upon, and which comes properly within the sphere of the Association for the Reform and Codification of the Law of Nations, namely, the subsidiary system of Consular Marriages. Of comparatively recent origin, this system has been called into existence by the abolition of the mediæval Commercial Factories, which enjoyed various privileges of Exterritoriality* not merely in the Mahommedan cities of the Levant, but in Christian countries, such as Russia, Armenia and Portugal. It must not, therefore, be supposed that the English Consular Marriage Act of 1849 was an uncalled for innovation upon the general marriage law of European States; it was, I admit, an innovation, but it was, as regards Europe, a substitute for the privilege heretofore

* Traced to the Thirteenth Century in the *Law Magazine and Review*, No CCXXXIII., August, 1879, Art. "The Capitulations of Lesser Armenia."

enjoyed by British subjects of intermarrying in a foreign country according to the requirements of British law within the limits of a British trading Factory. It had been already found necessary, in 1823, to legislate with a view to relieve from all doubt marriages solemnized in the house of any British subject residing in a British Factory abroad; but with the abolition of trading Factories themselves, this privilege altogether ceased, and in some countries it was found to be utterly impossible for a Protestant to be married according to the *lex loci*. In consequence of strong representations on this subject, Parliament passed the Consular Marriage Act of 12 & 13 Vict., c. 68 (1849), which enabled marriages to be performed between British subjects, or when one party only is a British subject, in a British Consulate. These marriages must be celebrated in the Consular office, in the presence of the Consul, either by himself as Registrar, or according to such religious form or ceremony as the parties may see fit to adopt. The Consular officer is authorized for this purpose by a special warrant from the Secretary of State for Foreign Affairs, and a copy of the marriage is made in a register book, a certified extract from which is entitled to be received as legal evidence of the marriage in a Court of Law. I do not enter into further details, as my purpose is not to criticise the defects of this statute, which have been carefully pointed out in the report of the Royal Commission on the Law of Marriage, published in 1868, of which I was myself a member.

Italy seems to have been the first European State which followed the precedent established by Great Britain in 1849, with what distinctions I shall presently state; she enacted a Consular Marriage Law on 28 January, 1866. The Netherlands adopted a similar enactment on 25 July, 1871; Switzerland on 24 December, 1874, Germany on 6 February, 1875, and Belgium, still more recently, on 20 May, 1882. None of these States, however, have gone

to the same extent as England in authorising their Consuls to marry women of their own nationality to foreign men. The functions of their Consuls as celebrants or as witnesses of a marriage are limited to cases where both the parties to the marriage are of the Consul's own nationality, or where a man of the Consul's nationality intermarries with a foreign woman. The reason of this limitation is not far to seek. The woman acquires by her marriage the domicile of her husband, and is invested during her coverture with his nationality, and it is consistent with sound principle that the Consul of her husband's nationality should be competent to admit her to participate in his domicile, and to share the protection of his national character, but the competency may well be questioned, say of a British Consul, to execute an act whereby a British woman, resident in a foreign country, shall be entitled by marriage to the national character of a Belgian or Italian subject without an international treaty to that effect.

I have alluded to the fact that the Belgian Legislature has only recently passed a Consular Marriage Law. It is to this purport.

"Article 170 of the Code Civil is replaced by the following dispositions:

"1. Marriages in a foreign country between Belgians, and between Belgians and foreigners shall be celebrated according to the forms usual in the said country.

"2. Marriages between Belgians may be equally celebrated by the Diplomatic Agents, and the Consuls of Belgium conformably to the Belgian Laws.

"3. The Diplomatic Agents and the Consuls of Belgium may celebrate marriages between Belgian men and foreign women, if they have obtained the special authorisation of the Minister of Foreign Affairs.

"4. Marriages are published conformably to Belgian Laws in Belgium by the officer of the Civil State, and by

the Diplomatic Agents and Consuls in the Chanceries where the unions shall be celebrated.

"5. Marriages celebrated in the forms prescribed by Secs. 1, 2, and 3 of the present law shall be valid, if the Belgians have not contravened the dispositions prescribed by Chapter I., Title V., Book I., of the Code Civil, under pain of nullity.

"6. The capacity of the foreign woman is regulated by her personal law."

This law was promulgated in Belgium on 20 May, 1882, and is published in *Le Moniteur Belge, Journal Officiel*, of 24 May, 1882.

Before this law was adopted by the Belgian Chambers and sanctioned by the King of the Belgians, the marriage law of Belgium was identical with the Code Napoléon, under which marriages in foreign countries between Belgian subjects and between Belgians and foreigners were valid, if solemnized according to the forms usual in that country, provided always that the preliminary notices and consents enjoined by the Code Napoléon had been observed. The difficulty hitherto complained of in England has been that when an Englishwoman intermarries with a French or Belgian subject in England, it is extremely difficult for her to ascertain that the preliminary requirements of the French or Belgian law have been strictly fulfilled. There are two modes of meeting this difficulty. The one would require Diplomatic negotiation, as in the instance of a British subject desirous to be married in Italy according to the law of the kingdom of Italy. In such cases the British Consul is authorized to issue a certificate, when properly satisfied, of the fact that there is no impediment in British Law to the marriage of the Englishwoman, but Lord Hammond informed the Marriage Law Commissioners that the British Government had a good deal of discussion with the Italian Government as to the terms in which this certificate should

be issued. The other mode of meeting the difficulty would be for the Englishwoman to take advantage of the particular foreign Consular Marriage Law applicable to her future husband's case, and to have her marriage solemnized civilly in the first place at the Foreign Consulate, and afterwards religiously, according to the forms prescribed by the English Marriage Law. This double ceremony would be no special hardship upon her, inasmuch as if her future husband is domiciled in a country where the Code Napoléon is law, and she went over to his country to be married, she would have to undergo a civil marriage in the first place, before she could be admitted to the ceremony of a religious marriage.

Sir Robert Phillimore in his Inaugural Address already alluded to, has expressed a hope that a general rule may be established by the consent of nations to the following effect namely—

"That in this contract of contracts, marriage before a civil officer according to the forms and with the delays prescribed by the Civil Law of the country where it is celebrated, should be everywhere recognised as valid."

The Consular marriage, if it stands alone, falls very far short of this ideal. Its validity may be impeached everywhere except in the Consul's own country. Evidence was produced before the Royal Commission on the Laws of Marriage, that in Portugal, for instance, the marriage of a Portuguese with a British subject at a British Consulate was not recognised by the laws of Portugal as valid; that the contract might be repudiated by the Portuguese subject, who could immediately afterwards be married to another person according to the law of the land; and that the offspring of a Consular marriage, even if the contract should not have been ever repudiated, would be illegitimate by the law of Portugal and as such could not claim the property of the father, if he were

a Fidalgo. It is obvious, therefore, that a Consular marriage by itself cannot be relied upon as a valid marriage for all purposes, as for instance to give to the offspring heritable blood in respect of both parents. In a country like England, where the preliminary requirements of the domestic law are very simple, there can be no reasonable objection, when an Englishwoman proposes to intermarry with a foreigner whose own law gives validity to a marriage solemnized by his Consul, for the Englishwoman to assure herself of a valid marriage according to the law of her future husband's domicile, and at the same time to secure to her children a right of inheritance to any family property descending to herself in virtue of a marriage solemnized according to the law of her native country. The law of the Code Napoléon may seem to English minds to be unnecessarily severe in declaring marriages apparently regular to be nevertheless void in respect of non-compliance with preliminary forms, but it should be kept in mind that the Code Napoléon when it annuls a marriage for a defect of form, does not thereby bastardize the issue irremediably. It allows of remarriage, and the parents by remarriage can legitimize their children previously born. In fact it must not be forgotten, that marriage in the countries where the Code Napoléon prevails, does not merely give to the offspring a *capacity* to share by inheritance the fortune of the family, but it imparts to them a *right* to share it, so that there is a reason in such countries for making the consent of the father an indispensable condition precedent to the marriage of a child, which does not exist in other countries, as, for instance, in England, where the father's power of bequest is for the most part unlimited.

The Social Science Association, as already mentioned, had its attention called to the anomalous operation of foreign marriage laws, under which marriages contracted in England between English women and foreign men, which

were valid in accordance with the provisions of the *Lex Loci*, have been frequently declared by foreign Courts to be invalid by reason of the foreign man not having complied with the requirements of the law of his own country as regards publication and the consent of parents. Further, there have been numerous cases brought to the notice of Her Majesty's Government of English wives having been repudiated by their foreign husbands in France and in Belgium, on the ground of their respective marriages having been solemnised in England without due regard to the requirements of the foreign marriage law. It has accordingly been suggested by a Committee of the Social Science Association that, in order to facilitate the ascertainment of the competence of a foreign subject by the law of his own country to contract an intended marriage in England, the Consul of his country should be authorised by his Government, on the receipt of a moderate fee, to make enquiry into any such case, and if it be found that the intended husband has complied with the requirements of the law of his own country to grant a certificate to that effect. This would be in accordance with the practice which has been already referred to as introduced into Italy, but with this difference that in Italy the certificate is required by the 103rd Article of the New Civil Code, and the marriage may not be solemnised without such a certificate; whereas in England the production of such a certificate would not be required by the Law of England as a condition precedent to the solemnization of a marriage, where one of the parties is a foreign subject. Further, it may deserve observation that, if a foreign Government were to authorise its Consuls to grant such certificates, a Consular certificate would not be conclusive of the validity of a marriage according to the Law of the Consul's country, unless it were so declared to be by the Foreign Law. An Englishwoman accordingly, who may

have intermarried with a foreigner in England on the faith of such a certificate, might still be in peril of her marriage being declared invalid, if she accompanied her husband to his own country, for it can hardly be expected that any of the countries, whose Civil Code of Marriage is grounded on the Code Napoléon, will legislate with a view to make a Consul's certificate unimpeachable, if the truth of the facts certified by it were disputed before one of its duly constituted legal tribunals.

At the time when the Committee of the Social Science Association, of which I was myself a member, drew up its recommendations, which have been communicated to the Archbishops of Canterbury and of York, and to Her Majesty's Principal Secretary of State for Foreign Affairs, the Belgian Chambers had not legislated on the subject of Consular Marriages. The legislation of May 20, 1882, above referred to, has, it is true, made no change in the Belgian Law of Marriage. Its merit is that it has facilitated the observance of that Law by Belgian subjects in Foreign Countries, and that it furnishes a *modus nubendi* to native women, who may intermarry with Belgian subjects in foreign countries, whereby their legal *status* as wives, if they accompany their husbands to their own country, will be assured to them. There is every hope that the French Chambers will supplement the French Code Civil in a similar manner, and that all the European States, whose marriage Law is grounded on the Code Napoléon, which follows their citizens as a personal law into whatever foreign country they may direct their steps, will wisely enable their citizens to observe the requirements of their own law by availing themselves of the Consular marriage.

One great value of the Consular marriage, if it be looked upon as an institution of Civil Society, which in all probability will become generally adopted in course of time by all States which have commercial establishments in the Far East, is

that it will supply trustworthy proof of the contract of marriage where such proof would otherwise not be forthcoming. In China, for instance, a marriage solemnized according to the *lex loci* could not well be proved in a European court, as no official act accompanies a marriage in China, and there are no public register books, so that as regards the Code Napoléon, the proof required by articles 47 and 171 of the Code Civil could never in such a case be furnished. In Japan some slight advance has been made, and at the request of the French Consular Agent, who has no authority under the Code Civil or under any French Consular regulations to celebrate marriage, the Japanese authorities consented in 1876 to marry two French subjects to two Japanese women. I am informed also that one of the great difficulties in preparing a Japanese Civil Code at the present time has been found in dealing with the subject of marriage. For my own part I am persuaded that it is hopeless to expect a general *consensus* of nations upon points which regard the *family*. Still more difficult becomes the problem where religious ceremonies are superadded. The State, however, may not unreasonably supply fresh aids, from time to time, to secure a more complete validity to the Civil Marriage before the Consul, of which it is the responsible parent, by International Treaties. There cannot be a higher International duty for States than to concert measures that shall maintain the good faith of a contract, which, as it has been well said by a high Judicial authority, is the basis of the whole fabric of Civilised Society.

TRAVERS TWISS.

II.—THE LATE RIGHT HONOURABLE MOUNTAGUE BERNARD.

IT happened to us nine years ago to be in Venice, and, while there, to read the announcement of a forthcoming Conference on the Law of Nations which was shortly to be held in Brussels. Emulating, at a humble distance, the energy of our Transatlantic cousins, we determined to attend the meeting. A moonlight flitting up the Grand Canal, and we had reluctantly torn ourselves from the shadow of St. Mark's, and entered on a new career amid the somewhat intricate network of railways that connects the two cities. We reached the pleasant Belgian Capital soon after the Conference opened, and the first voice which fell upon our ears, as we entered the Hôtel de Ville, was the well remembered voice of Mountague Bernard, so full to us of memories of old Oxford days.

Of that Conference, in which Bernard and Twiss worthily represented our own *Alma Mater*, and in which Dudley Field, Rolin-Jacquemyns, De Laveleye, Bluntschli, Mancini, and other Jurists of far-reaching fame took part, a chronicle was duly given in the pages of this Review (*Law Magazine and Review*, December, 1873), and for the present it may suffice to recall the circumstance, without dwelling on its details. Two years later, in 1875, we met our old teacher once more in Conference, at a subsequent meeting of the Association we had both helped to found, at The Hague. But that was far from being the last appearance in public of one who may truly be said to have died "in harness." When the Institute of International Law (founded at Ghent, in September, 1873, but a few weeks before the Association) met at Oxford in 1880, the distinguished Jurist and Diplomatist who had been also one of the Foundation members of the Institute, was naturally elected President of the Session.

That Session, as the very recently published *Annuaire* of the Institute (Brussels: Librairie Muquardt, 1882) opportunely recalls, was noticeable for the series of Resolutions on Extradition passed there, and now generally known as the Oxford Resolutions. Upon these and other features of Mr. Bernard's work in connection with the Institute, we shall probably have something to say later.

We would first of all, however, gather up some of our memories of his Oxford days.

Mountague Bernard came of a West Indian family, and he bore some of the outward marks of the enervating influences of the West Indian climate. But they were only outward. They have sufficed in all probability to be the moving cause of the highly misleading suggestion of a daily contemporary to the effect that Mountague Bernard might have seemed, to those who saw him only at the High Table of All Souls, nothing more than a "highly educated lounger." We really cannot conceive a more utterly erroneous estimate of his character, and we must say that we think All Souls was quite the last place in which it could have been formed, if anybody ever actually formed it, which we greatly doubt. For, although those who have partaken of the hospitality of All Souls know something of its geniality, a geniality to which the General Secretary of the Institute of International Law bears ready testimony in the recent *Annuaire*, it was precisely in and through All Souls that Professor Bernard showed himself a devoted worker, refusing to be bound by the technical limits of his Chair. We remember very distinctly a striking instance of unrequited extra work, undertaken spontaneously by Mr. Bernard, in the interests of the scientific teaching of Jurisprudence, and carried out in the Hall of All Souls. There must be others besides ourselves who yet preserve the notes they took from his extra course of Lectures on General Jurisprudence in the Lent Term of 1865. The

Tables which he circulated among his hearers, in some respects slightly deviating from the language of Austin, are now before us, and we think we shall be doing no more than justice to the memory of our teacher by giving a brief outline of the Course in the present article. We recall to mind with pleasure how favourably the learned Professor's zealous over-stepping of the limits of his "Cathedra" was accepted by a large audience comprising within its members all shades of University rank. This was, indeed, as we can testify, always more or less a characteristic of the prelections of Mountague Bernard. We remember a course which was attended, *inter alios*, by the Crown Prince of Denmark, and by a distinguished member of the French Aristocracy alike of Literature and birth, M. d'Haussonville. Nobody who ever attended the Lectures of Mr. Bernard could for a moment have spoken of him as a "highly educated lounger." Highly educated he certainly was; a lounger he certainly was not. In point of fact, it may, we fear, be taken as certain that he did not allow himself sufficient rest. He went from one work to another, until he was taken from among us, still full of work. Yet the published results of that life of unceasing toil are few, and little known. Many a man of much less fine an intellectual fibre will make a far greater show in the Catalogue of the British Museum. Nevertheless, Mountague Bernard was a thinker, and though writers are many, thinkers are few.

There is one early contribution of his to the Literature of the Law of Nations, an Essay on the *Growth of Laws and Usages of War*, which is certainly not widely known, but to our mind has always seemed, as far as it went, one of his most valuable monographs. It has the misfortune, perhaps, for the general reader, to be buried in the valuable but short-lived *Oxford Essays, contributed by Members of the University* (London: Parker), in the volume for 1856. The same series, in its different issues, enshrines or entombs some of

the most characteristic productions of Max Müller, Edward Augustus Freeman, Goldwin Smith, and William Ewart Gladstone. To be buried in such company can hardly be derogatory to the memory of Mountague Bernard. Yet the fact remains that this Essay is but little known beyond a comparatively limited circle. It deserved a better fate.

Looking back upon Mr. Bernard's work as Chichele Professor of International Law and Diplomacy, several points strike us as requiring to be noticed here.

In the first place, we must emphatically assert that the extent of that work is not to be estimated by any tabular statement, if such could be compiled, of the number of lectures of which his Public Courses consisted, any more than by the relatively scanty list of his published Essays or Lectures. For, outside the regular curriculum of his stated Course, Professor Bernard was constantly in the habit of receiving students, *sine ullâ solennitate*, as the University puts it, and to this valuable feature of his teaching we feel that we owe much of our own knowledge of the subject which he so patiently and carefully illustrated for us. His method of teaching was entirely, or almost entirely, oral. The necessities of his Chair of course involved a certain amount of repetition for those who attended continuously, and he was himself, it seems to us, persuaded of a certain value to be attached to repetition, to the extent that it might assist in fixing particular facts or doctrines in the memories of his hearers. But as events did not wait upon his Lectures, and the days during which we were in the habit of attending them were eventful days, fresh illustrations constantly presented themselves, which he never lost the opportunity of bringing home to us to enforce the principles which he was laying down.

Civil War was raging in America during much of the time that we were among Mountague Bernard's hearers. It was impossible, under the circumstances, that when he

spoke of Federal and Confederate Governments, of Belligerents and Neutrals, of "*Instrumenta Bellica*," of Recognition, and other such subjects, he should avoid some reference to the keenly-debated questions of the day. In dealing with such points, his expressions of opinion seem to us always to have preserved the judicial temper which was so marked a characteristic of his professorial teaching. Setting aside, with a calm, it might seem cold severity, the exciting features of the case, he would reduce it to first principles, and then proceed to apply those principles to the point under discussion. You recognise A. B., he would say, as Belligerents; it logically follows that they (having a sea-board) must have ships of war. Then applying this to the concrete case of the *Nashville*, he would show that it covered the case of the Southampton Justices, who refused a warrant to search for a chronometer which a ship-captain wanted to recover. And so with the *Tuscaloosa*, he would point out, whatever rights belong to a given vessel as the public ship of a Belligerent, must also belong in the same measure to a vessel which acts as her tender. Obviously, these Lectures were not calculated to please both sides: as a matter of fact they probably pleased neither. But all that Professor Bernard desired to do was to set the true Juridical position before his hearers, and leave the two contending parties to make what they could out of it. It was not for him to take a side, but simply to state the rules of International Law applicable to a given case, and having so stated them, to leave them to work by their own unaided influence on the minds of his hearers.

The course which we heard on Federal and Confederate Governments was delivered during times of keen excitement over the merits of those systems. He dealt first with the historical case of the United Provinces of the Netherlands, showing how they had risen simply in defence of Religious Toleration and Commercial Privileges, without any idea of

a separation, and how loose consequently the resulting Confederation naturally was. The Provinces, in point of fact, he remarked, were simply kept together by a common danger from the House of Austria and the House of Bourbon, and in some degree by the predominance of Holland and Zealand. Switzerland, again, offered another example of a Confederation originally loose, a real, simple Federation of separate Cantons, with no Government except a Central Diet of Representatives, but now with two Assemblies, and an Executive already powerful, and tending to a closer resemblance to the Constitution of the United States. This change, which has for some time past been coming over the Helvetic Confederation, is in part due, as Mr. Bernard pointed out, to the War of the Sonderbund. Had he been lecturing on the subject now, he would probably have shown us the conflicting currents which are at work. One, hitherto the more powerful, taking alarm at the danger which at one moment really threatened Switzerland during the Franco-German War, or at least taking advantage of the alarm which was temporarily felt, and passing numerous Laws the result of which has been to strengthen the Central Power :—the other, hitherto somewhat supine, but now awaking to a sense of the tightening of the Federal bond, and likely to shake the newly-established Centralisation somewhat severely. The Germanic Confederation has now only a historical interest, under the aspect which it presented when Professor Bernard included it in his sketch of Federal and Confederate Governments. Its defects were numerous. Whether they are all remedied under the existing Empire may be doubted, but the enquiry would be too extensive to enter upon here, and would not perhaps be very practical just now. It can scarcely be doubted that changes will be made some day. In what direction, time will show.

The twofold aspect of the American Constitution was

carefully dwelt upon in the Course to which we are referring. Looking at one set of Powers conferred by it, Mr. Bernard observed, the impression made would be that the United States were a Nation. This is the side to which the powers of the President belong. Looking at the other set, the Powers possessed by the several States, the impression would be that it was a Confederation. And to this twofold aspect he attributed the apparent impossibility of arriving at a solution of the questions then at issue between North and South. It may be hoped that, with the reconstruction of the Union, the questions which were then dividing men into two camps, in Europe scarcely less than in America, have received a final solution.

On the Ottoman Empire, Professor Bernard dwelt more briefly, but during the period of our personal acquaintance with his Lectures, he drew our attention to the practical independence of some of the then still technically styled "Vassal States," two of which are now independent Kingdoms. And he noted the differences to be remarked between the positions of the Rulers in Egypt, Tunis, and Tripoli respectively. The net result of the whole he summed up as a "compromise" of a kind which could not last. The end of the compromise seems now to be at hand, and one of the most important questions of the day is what shall take its place.

To those who know the conditions of his Chair it will be unnecessary to recall the fact that the Public Law of Nations was not the only branch upon which Professor Bernard lectured. We have before us notes quite as full of Courses which were devoted to the exposition of the Conflict of Laws, or Private International Law. And, whatever the conditions of his Chair, we are quite sure it would not have been otherwise. His work as a teacher of the Law of Nations would obviously have been incomplete if he had not treated the one branch at least as fully as the other. We

are not sure, indeed, looking back at our memoranda, that he did not give even more time and care to Private International Law, by reason of its acknowledged complexity, though outside University circles, no doubt, he is best known by his published Lectures, which happen to be mainly devoted to questions of Public Law. Of divisions of Law, as such, it appears to us that Professor Bernard held them in small consideration.

We hear much, said he, of the Divisions of Law. This only means that we must refer to abstract ideas. The only division worth attending to, he continued, is that into Particular Cases, and General Principles. The division into Rights and Obligations is not of much value. Holding such views, we should naturally expect to find that the first Chichele Professor of International Law took, as he actually did, a survey of the whole field embraced in the title of his Academic position. Those who followed his Courses regularly were, therefore, made familiar with every aspect of the subject. But we find that his warnings as to the difficulties involved in the study of Private International Law were serious and repeated, and we well remember the pains which he took to make it as clear to us as he could, both in his public Courses and in the closer intimacy of his teaching "*sine ullâ solennitate.*" He laid the difficulties plainly before us, but at the same time he showed that they were worth surmounting from the importance of this branch of the Law of Nations, which he ranked very high, saying it was almost to be considered the more important branch. And he also showed that the difficulties were such as could be surmounted. They consist, in fact, to no small extent in the indistinctness with which text-writers have treated it, and which has made it seem, as Professor Bernard said, a "mass of confusion." To disentangle this confusion was one of the tasks to which he devoted himself, and the

thoroughness of that devotion was eminently characteristic. And not the least characteristic feature of his Lectures on Private International Law was his opening admission that, "strictly speaking, it does not form a part of International Law at all." For that, he continued, is properly "*inter Gentes*," and regulates the conduct of *States* towards each other, while this Division treats of the rights and duties of *Individuals*, and belongs more strictly to Municipal Law. But convenience has led to its forming part of the subject-matter of Treaties, and to its consequent inclusion under the head of International Law. The definitions given of this division in the Text-books, however, did not appear to Professor Bernard to be satisfactory. They erred, he considered, in that they were too narrow, and he expressed his dislike of Story's title, the "Conflict of Laws." We may add that the classifications usually adopted were in his eyes equally unsatisfactory.

As regards the Definitions, when we turn to the Roman Law, the Digest, he reminded us, affords rather a striking description of Domicil than a Definition. Nevertheless, it is to the Roman Law of the time of the Empire that we must go back in order to trace historically the origin and development of the importance of the consideration of Domicil.

For the purposes of Private International Law so-called, Domicil, Mr. Bernard said, might be defined as Legal Residence. And in this sense he used it throughout, so as to mark off the Legal from the merely conventional or popular aspect of Residence. The importance of the questions arising under this head he made clear at once, by pointing out how they involved (1) *Status*, (2) the Devolution of Moveable Property, and (3) National character. Hence we were naturally led over a wide field of considerations, and to the analysis of numerous divergent views.

Mountague Bernard would scarcely have been true to himself had he not warned us how much more easy it is to frame rules than to assign the limits for their application.

Marriage and Divorce necessarily formed an important part of this Course. It seems to us that the views which he expressed would logically have led to his holding with Sir James Hannen the validity of the marriage in *Sottomayor* v. *De Barros*, and of the first, the Chicago marriage, in the recent American case of *Roth* v. *Ehmann*, to which latter case attention was drawn at the recent Liverpool Conference of the Association for the Reform and Codification of the Law of Nations, in a Note by one of the International Secretaries, Mr. C. H. E. Carmichael.

To the Course of Lectures on General Jurisprudence which Professor Bernard delivered in the spring of 1865, we are disposed, as we have already said, to attribute an importance beyond even that naturally pertaining to their purely intellectual value. For we regard that Course as having given an impulse to the broader views of the cultivation of Juridical Science which have since prevailed at Oxford. When a distinguished Professor, widely known in the world outside the University, thought it well to step beyond the limits of his actual Academical position to give students of Jurisprudence a teaching which tacitly assumed that there was no such teaching afforded by the regular University Courses, it was clearly time for "*Alma Mater*" to look into the provision which she made for students, and to see where it was defective. And since 1865 much has been done in the direction of supplying the deficiencies which existed when Mountague Bernard was Professor. We do not necessarily agree with all the changes which have been made, but they at least indicate a stirring of the dry bones. And in the days to which we are looking back, the bones were very dry, and

sadly needed stirring. Had Professor Bernard been the "highly educated lounger" which our daily contemporaries are pleased to think that he appeared to be, he would not have moved a finger to stir Camarina. He would have let Camarina alone, and have passed on the other side. But that was not his view of his duties towards the University, and we rejoice that it was not.

It may not be out of place here to recall a few of the words which he spoke, so as to give some idea, however faint and imperfect, of the teaching we received from Mountague Bernard in General Jurisprudence, as well as in the Law of Nations.

He took care to point out to us how many different things were included under the general term Law, some of which are only Laws in popular parlance, as expressions of every day occurrence in our conversation. Such for instance, were the so-called "Physical Laws," from the point of view occupied by Mr. Bernard. Etymologically, as he showed, Law is something "*Positum*," set, or laid down. Yet it would not be safe to assert that such is always the meaning of the term.

Municipal Law, of course, unquestionably satisfies the etymological requirement of being "Positum," and to this our attention was early directed, and we were asked at the outset to note what was excluded by its definition as "Those Rules of Conduct which are sanctioned by the Sovereign Authority in the State." And no less were we warned that it mattered not to us, in this investigation into what might well have been called the Elements of Political Science, what might be the *Form* of the Sovereign Authority, provided it existed. It mattered not to us whether it were lodged in one person, in a few persons, or in the whole body.

When he had occasion to touch upon points relating to our own Constitution, Professor Bernard was always

careful to distinguish between the theory and the facts. In theory, he remarked, the King or Queen is the source of Sovereign Power; but only in *theory*, for the King or Queen is bound by the Law, cannot make Laws, and is guided by Ministers who are in the power of Parliament. It follows that in Great Britain the King or Queen is Sovereign only in *Title*. And when we say that the King or Queen is supreme in all Causes Civil and Ecclesiastical, all we mean, he observed, is that the Sovereign Authority of this Country is supreme in such cases. These passages, it will readily be perceived, had a direct reference to the increasingly difficult questions connected with Ecclesiastical Law, and they appeared to us to be of somewhat special interest to record from the close study which Professor Bernard is known to have made of that subject, one, as he himself remarked, open to much misconception. In his Course, it will be seen, he was, as he expressly stated, considering this branch of Law as a branch of Municipal Law, in so far as it is enforced by the Sovereign Authority in the State. So far, it might be styled, as by Coke, the "King's Ecclesiastical Law," *i.e.*, that part of the Law of the Christian Church which is Municipal Law in this Country. Many other interesting points discussed in this Course must necessarily here be passed over. The relation between Law and Morality, the distinction between the external standard appealed to by Law, and the internal standard appealed to by Morals;—the distinction between the Philosophy of Law and the Philosophy of Morals;—these, and many more, found some space, however the necessities of time might curtail it, in Professor Bernard's scheme of General Jurisprudence.

How much many of us owed to the Course in which this scheme was placed before us, though but in a brief outline never fully filled in by the master's hand, may perhaps be gathered, however imperfectly, from the slight reminiscences

which our notes, taken in the Hall of All Souls, have enabled us to put together. Enough has probably been said to show how, in all his University teaching, both within and without the strict limits of his Chair, the aim of Mountague Bernard was to lead his hearers to think and study for themselves—not to rest content with a parrot-like repetition of definitions, but to analyse the language of the current definitions and to search out if they were not defective, and if so how to re-cast them. He taught us to study what the Law is; what are its Principles; what has been its History, *i.e.*, how the Law has come to be what it is; and lastly, what the Law ought to be.

Thus Theory and Practice, History and Science, Philosophy and Politics, all found a place in the scheme of study which he held up to us as our standard. And in his own career, the work which he was called upon to do partook, in fact, of this many-sidedness. Each of the Divisions of Jurisprudence which he discussed may be said to have had him for its votary. The characteristic features of the teaching of the first Chichele Professor of Diplomacy and International Law may be traced in his discharge of the high public functions which he filled as Member of the Judicial Committee of the Privy Council, as High Commissioner at Washington, as Draftsman of the Revised University Statutes, as President of the Institute of International Law.

Trinity and All Souls may well take pride in a memory which is common to both Societies. But the memory of Mountague Bernard should be yet more widely held in honour, wherever Jurisprudence is taught, as the memory of one who in his day guided the steps of many in the pursuit of Law as a true *Lux Gentium*.

III.—THE METHODS OF JURISPRUDENCE.*

JURISPRUDENCE, *juris prudentia* or *peritia*, *Rechtswissenschaft*—these are terms current among lawyers and scholars, and imply the existence of a systematic body of doctrine; of a special kind of knowledge which can be and is methodically treated, and possesses methods and ideas proper to itself. A body of such special knowledge is a science, unless it depends only on the application of other and more general sciences. Thus there are scientific treatises on gunnery, navigation, and railway engineering. But we should hardly say that seamanship, or gunnery, or the construction of locomotives, is a science of itself. The application of the seaman's, or gunner's, or locomotive engineer's knowledge is a distinct art in itself, having in each case its own distinct practical end, and needing to be separately studied by those who would be skilled in it. But the knowledge that guides the art is obtained by the application to a particular kind of cases of general physical truths, and the methods are applications of those discovered and used in mathematics and mathematical physics. Therefore we may speak for some purposes of the science of seamanship for instance, but if we are speaking with attention to the exact use of words, we shall say that seamanship is an art depending on certain branches of mathematical and physical science. As regards our own case, there is no doubt that the practice of the law is a perfectly distinct art. It is constantly spoken of as such in our older books. The lawyer's technical words are called terms of art, and in our own day an ill-drawn instrument may still be described by the judge as inartificial. In this usage the word has probably the larger sense in which the

* An introductory lecture delivered at University College, London, October 31, 1882.

"liberal arts" were understood in the mediæval university course, covering what we now understand by both art and science; but at all events it includes art in the modern sense. Indeed, the lawyer's is a manifold art. As counsel he is called on to form a practical judgment on the legal effect of the facts laid before him; as advocate, to present in the most forcible and persuasive manner that view of the case which is most favourable to his client's interest; as draftsman, to express in apt and sufficient words the intention of the parties who instruct him. Nor can a draftsman, in particular, produce really good work, whether the instrument to be framed is an ordinary lease or an Act of Parliament, unless he has a share of artistic feeling in the eminent sense, and takes a certain artistic pride in the quality of his workmanship, apart from the reward he will get for it.

Art, then, we certainly have. And we have a body of doctrine which in most civilized countries is systematic, and in England is at least capable of being made so, which is the peculiar and technical study of lawyers—so much so that laymen complain of it for being too technical—and which cannot be regarded as the application of any other and more general science or sciences. Legal ideas have as clear a generic stamp of their own as mathematical or physical ideas; and in law, no less than in physics, the terms of commonest use have a widely different import for the trained and for the untrained mind. A man of what is called good general education will talk of Obligation or Possession as he will talk of Energy or Mass, thinking he knows what he means, but in truth having only a vague shadow of a meaning. The physicist will tell him in one case, the lawyer in the other, that he is using words which have taken generations of strenuous thought and discussion to bring to their full and clear significance. In either case

he may put us off, if he chooses, with ridicule—the last refuge of obstinate ignorance in its lighter moods, as the will of Providence is in its serious ones. We also find that competent lawyers are substantially at one in their methods and their terminology, though they might have some trouble in explaining either to lay people, and English lawyers, for a variety of reasons, for the most part anxiously shrink from verbal definition. Law, then, has all the marks of a distinct science; and, seeing that legislatures and courts of justice notoriously exist, it cannot be charged with being a science falsely so called and versed in unreal matter, such as astrology or the Chinese doctrine of auspicious and inauspicious sites. It may be suggested, perhaps, that legal science is nothing but the application of logic (at all events if logic be taken to include the systematic use of induction and analogy) to a special aspect of human life. My answer to this would be that every science is equally an application of logic to some class of facts. Logic is not a special science or art at all, but the condition or instrument of all knowledge alike. With metaphysics, and perhaps pure mathematics, it stands apart, presupposed in every science, but specially attached to none. It may be said, again, that Jurisprudence is one of a group of special studies which all come under Politics in the wide sense, and that some parts of what is called legal knowledge are really quite as much political. To this I should not gravely object, or not at all. Political science as a whole, however, cannot be said to be much organized at present; and the special branches, jurisprudence, political economy, and whatever others there may be, must meanwhile exist on their own footing if they are to exist at all, and even encroach on the general theory of politics when they find it convenient.

If it is certain that jurisprudence or legal science is the name of a real and distinct scientific study, no less is it

certain that learned men have found it by no means an easy task to define its contents and scope. At this day widely different accounts of these are given by different schools. A student who has received an English training is at first bewildered by the Continental treatment of theoretical jurisprudence. It is not merely that the terminology differs from his own; there is a radical diversity of conception and handling. Perhaps it may help us to understand such a divergence if we go back to the earliest classical definition of Jurisprudence, and see to what questions it gives rise. I mean Ulpian's, which is not only preserved in the Digest, but conspicuously adopted at the beginning of the Institutes, and is therefore familiar to every student of Roman law.

The words of Ulpian are as follows:—*Iurisprudentia est rerum divinarum atque humanarum notitia, iusti atque iniusti scientia.* We need not now trouble ourselves, I think, to discuss the exact meaning attached to this expression by Ulpian or the Greek theorists whom he followed. It will be more for our present purpose to see if, without doing violence to the words, we can find a meaning acceptable enough to lead us to definite issues. "Jurisprudence is the discernment of things divine and human, the knowledge of what is just and unjust." At first sight this is but an unpromising rhetorical description, covering, as it seems to do, the whole field of human conduct without distinction between legal and moral duty. But if we look closer, we see that the *scientia* here in question is a discriminative, not a collective knowledge. To know what is just and unjust is to know the difference between just and unjust. What if the *notitia* spoken of in the first clause be likewise a discernment not so much of the things themselves as of the distinction between them? If so, we may read it thus: "the discernment of that which concerns the gods and that which concerns human authority," the separation,

in other words, of the province reserved for religion and morality from the province of law. That is not yet jurisprudence, but it is a preface to jurisprudence; it is the knowledge of what jurisprudence is not, and, to that extent, of what it may be. The *res divinae* are to be left aside for the theologian or the moralist. And this is a distinction which is not merely formal, but goes deep into the practical working of law. Thus the motive of any given action, as distinct from its intention, is a *res divina* in the sense we have put upon Ulpian's definition. The law regards intention for many purposes, but not motive. It makes a great moral difference (to take a stock example) whether a man breaks a baker's window and snatches a loaf as a mere piece of mischief, or because his children are starving; but the legal offence is the same. Intention is a necessary element in the facts constituting theft; but when all the elements are there, they no less amount to theft because the motive may be such as to extenuate or all but abolish the moral demerit. Practically the result may be tempered by judicial discretion, which (not being bound to give reasons in detail) supplies the more subtle adaptations required by moral feeling. This is just the kind of point on which even intelligent laymen are apt to stumble; law-makers seem to them unjust because they leave the refinements of administration to the administrator. I leave you to consider for yourselves, from this point of view, the spirit of our English criminal justice; the wide range of possible sentences (in the case of manslaughter for instance anything from one day's imprisonment to penal servitude for life), the power of suspending sentence altogether by taking security to come up for judgment, the extreme rarity of minimum sentences, and the like.

To return to our general topic: we have set off the proper field of legal study, namely *res humanae* in the sense

of institutions of human ordinance. Then the definition specifies farther: *iusti atque iniusti scientia*, the knowledge of what is just and unjust. Here just and unjust must mean something within the sphere of *res humanae*, something allowed or disallowed by rules which are administered, or conceived so to be, by a definite human authority. Just is that which is, actually or potentially, upheld in a court of justice; unjust is its contrary. Justice, legal as well as moral justice, is no doubt conceived as antecedent to any particular tribunal. Nevertheless if we want to know in practice what legal justice means, we must look to the usage of existing lawgivers and judges. So far we have traced in the rough the distinction between law properly so called and opinion or morality. The remark is obvious that Ulpian seems to omit the peculiar relation of positive law to the State. But the Latin word *ius* really includes this, if we may forget the unhappy term *ius naturale*, which seems to be a mere external ornament borrowed from Greek philosophers in excess of zeal to make a show of philosophical culture, and inconsistent with the proper Roman use of the word. Indeed the Roman vocabulary for these general notions was almost too good. A Roman, possessing such apt and clearly distinguished words as *mos*, *ius*, *lex*, and *aequum* and *bonum* to fall back on when he came to the region of moral discretion, could not feel much occasion for further verbal analysis. He could scarcely have been made to understand our modern ambiguities and flounderings with Law, *Recht*, and so forth. We analyse to supply our want of clear terms and correct instinct. Our science, then, is a knowledge of human laws. But of what laws, or what species of them? Are the laws or legal conceptions we study to be actual or ideal, general or particular? There are many distinct systems of rules by which the tribunals of civilized countries actually profess to

be guided. They have the family likeness which belongs to the corresponding institutions of all civilized States, but they have considerable specific differences. We find one body of legal doctrine and form of legal proceedings here, another at Edinburgh, another in the Isle of Man, and another in Jersey; this by merely looking round us at home. If we go beyond our own seas, we may count up a dozen or more distinct bodies of law without quitting the dominions of the British Crown. And then there are several distinct systems of speculation and argument by which philosophers have endeavoured to make out what the laws of civilized States, in their general features at any rate, must be or ought to be. This kind of discussion may range from the most abstract and general ideas to the pressing and practical needs of the day. Moreover we may consider the form of laws as well as their matter; this leads us to such topics as codification, draftsmanship, and even parliamentary procedure. Shall the province of jurisprudence be deemed to embrace all these lines of inquiry, or some and which of them? Let us see what number and variety of possible species of legal science we have obtained.

I. First consider laws as the actually existing and operative rules under which justice is administered. A man may study the system of his own land, in order to know how things stand with his own property and business, or to qualify himself as a skilled adviser in the affairs of others. This is what we mean in common speech by being learned in the law. By a good lawyer we signify, speaking among Englishmen, a man well acquainted with the laws of England as they now are and concern our present affairs. We may call such knowledge practical or empirical jurisprudence. In England it has to be sought in a clumsy and laborious fashion, and has got a forbidding reputation. It may be not useless to say that, in spite of all repulsive

appearances, the student can commit no greater mistake than despising it.

A bare account of existing laws may be sufficient for common practice; but at many points it must leave unsatisfied curiosity in a mind that is curious at all. Doubts and anomalies force us to inquire how the particular legal system and its various parts came to be what they are. And if we pursue the inquiry far, we shall find that, as many things in existing law were explicable only through history, so the history of one system is not complete in itself. Sooner or later we break off in a region of tradition and conjecture where we can guide ourselves only by taking into account the kindred institutions of other nations and races. Thus we are led to historical and comparative jurisprudence, a line of study which forms a bond of alliance between the scientific lawyer on the one side and the historian, the archæologist, and the ethnologist on the other, and enables legal science to claim an assured place among the Humanities.

Again, comparative study discloses a certain amount of groundwork and typical conceptions which are common to all legal systems, or to all that have made any considerable way towards completeness. The Romans discovered, or thought they discovered, such a common groundwork of legal institutions in the various commonwealths that became subject to Rome. What remained, after deducting local and technical peculiarities, was called by them the common law of nations, *ius gentium*. Human society is so far alike in all tolerably advanced nations that the same kind of dealings have to be regulated and the same kind of interests protected. Marriage and the custody of children; sale, hiring, loan, and pledge; liability for voluntary or involuntary acts causing injury; the punishment of theft and homicide—these matters, under whatever names or forms, must be provided for in every community where a settled order

is to be preserved. Thus we get a common stock of general ideas, the study of which, so far as we can pursue it or imagine it to be pursued apart from the study of any actual system of law, may be called General Jurisprudence. But these general ideas of law may be approached from another direction. The endeavour may be made, not only or chiefly to recognize them as being in fact common to different systems, but to exhibit them as necessary; to deduce them from the general conditions of human society and action, and define their exact import without reference to their actual treatment by legislators or courts of justice. Thus we may attempt a general definition of such ideas as Duty, Intent, Negligence, Ownership, Possession, or (boldest ambition of all) of Law itself. Speculation of this kind (for it is essentially a speculative study) has of late years been conveniently named Analytical Jurisprudence. It is apt to run up into speculations on the theory of politics and government which really form a sort of political prolegomena to legal science, or borderland between jurisprudence and politics. To this region belongs the theory of Sovereignty which is so conspicuous in Bentham and Austin.

We have then already four branches or methods of jurisprudence, practical, historical, comparative, and analytical (for what I have called General Jurisprudence is hardly more than a name for the collective result of the two latter), and these are all concerned with laws, not as they might be or as we should like them to be, but as they are.

II. If now we take in the consideration of laws as they ought to be, we pass into ground which belongs—according to English notions at any rate—to the statesman more than to the lawyer. Still it belongs to lawyers in some sort, as technical knowledge is needful to give definition to the statesman's ideas, and express them in an appropriate and sufficient form. This department of jurisprudence is marked off from the others in that it does not examine facts, but

aims at an end or ideal. This may be expressed by calling it, as I have elsewhere called it, Final Jurisprudence, by analogy to the well-known term Final Cause. The consideration of it may be approached in two ways. In England Bentham has taught us to approach it with a view to practice. If we consider what laws ought to be, it is because we want to make them such as they ought to be. We conceive our ideal for the purpose of realizing it by reforms. The instrument of reforming laws is legislation; and we must further study the powers and the handling of the instrument if we would use it with effect. We must learn how to apply it to the best advantage. Our good intentions must be executed by the best possible workmanship; and if we find that the technical methods in use themselves need reforming, they also must be reformed. Thus our Final Jurisprudence assumes the shape of a Theory of Legislation, with special branches treating of the formal structure of laws, codification, revision of codes, and legal procedure. If you want to see a good practical exposition of the theory of legislation as understood by enlightened Englishmen, you cannot do better than study the principal chapters of the Indian Penal Code with the notes annexed by its authors to their original draft. And if anybody were to challenge me to say what is the use of a theory of legislation, I should think it a sufficient reply to point to the Anglo-Indian codes. Bentham was in many ways an unpractical or impracticable reformer, but his work gave a fruitful impulse to practical minds such as Macaulay's and Macleod's in the following generation.

But there is another way of considering what laws ought to be. The perfect and ideal law may be regarded as a kind of pattern existing in the constitution of man's social nature, or in the minds of philosophers, and consisting of principles which, as being absolutely reasonable, ought of

right to be followed by all reasonable men, though, because of man's weakness and the local diversities and historical accidents of existing governments, the laws which are in fact enforced by princes and rulers can be only more or less rude approximations to them. Similarly the law which in given historical circumstances a perfectly wise legislator would enact may be conceived as a pattern from which the law that is actually made unavoidably deviates to a greater or less extent; and the former may be deemed to be, in the ideal sphere of reason though not in fact, not only a law in some sense, but more truly the law for the given circumstances than the imperfect production we have to accept in practice. The general principles of legislation and government which are in this manner put forward as claiming assent from all men in so far as they are rational and social beings are said to be of natural obligation, and the sum of them is called the law of nature, *droit naturel*, *Naturrecht*. The law which would in itself be best for a given nation in given circumstances is sometimes called, by authors who take this point of view, *positive law*, the rules of actual civil obligation which we of the English school call positive law being by these authors named *enacted* laws, and relegated to a subordinate place in their exposition.

This view, such as I have endeavoured to characterize it, is still prevalent among Continental philosophers and jurists. The sort of doctrine which embodies it may be called Ethical Jurisprudence, for the law of nature, whatever it may be, is alleged to be binding on all men's reason, which is as much as to say that it is of like obligation and equally wide application with morality: and indeed its principles appear to be nothing else than those moral and social precepts which, by general consent, or in the opinion of the expounder for the time being, are convenient to be enforced by the power of the State, or would be so in a perfect State. By

those who take up this doctrine it is considered the most important and dignified branch of legal science, and is often called the philosophy of law in an eminent or exclusive sense, and though it is not in itself incompatible with other branches of jurisprudence, it is apt in the hands of these authors to thrust them very much into the background. So far as my acquaintance with it goes, it appears to me to lump together in a cumbrous and over-ambitious manner a good many topics in the theory of government, politics, and legislation, which are better treated separately. Nevertheless, we cannot dismiss it in the lump as absurd or illegitimate. The theory of legislation must take its most general data from the most general facts of civilized human society. It must equally take its first principles, avowedly or tacitly, from ethics. Ethical Jurisprudence, therefore, is to a certain extent not only legitimate, but necessary. The only strictly necessary difference between our "theory of legislation" and a German philosopher's *Naturrecht* is that the Continental schools consider their ideal of legal institutions as a thing to be contemplated in and for itself, with a metaphysical interest which is as it were cut adrift from practice; while the Englishman's ideal is of something to be realized, or approached as near as may be, in an actual State, for actual citizens, and by the positive enactment of a legislature. But the difference is vastly exaggerated in outward show by the circumstance (not that it is an accidental one) that the English and the Continental schools found their theories on widely different ethical systems. In the sense in which I have distinguished the terms, there might be a Kantian theory of legislation and an utilitarian *Naturrecht*. And many chapters of Mr. Herbert Spencer's recent work would be most intelligibly described to a Continental jurist as *Naturrecht* treated from the point of view of Mr. Spencer's philosophy of evolution. Transcendent theories

of moral obligation, however, naturally lead to a transcendent philosophy of law which constructs an ideal for its own sake; and the consideration of morality as a means to welfare or happiness leads to the consideration of the State and its institutions in the same manner, and to the framing of political conceptions for practical purposes and under practical tests. In other words, the political grounds and reasons of legal institutions will present themselves to the philosopher who holds a transcendental theory of ethics as texts or chapters of the law of nature; while to such as are content to follow the humbler but surer path of experience they will rather appear as topics to be used in the theory of legislation. The ethical habit of thought will impart its own form and colour to the political and legal philosophy founded on it. Thus the students of France and Germany, trained on the lines of Descartes or Kant, are prone to make much of the law of nature; Englishmen who study law with any theoretical interest, deriving their impulse mainly from Bentham, think of law reform and active legislation. And, for the reason just given, not only the English and the Continental student differ in their cast of thought, but each expresses his thought in a language unfamiliar to the other, and understood by him with difficulty. The most hopeful common ground for a better understanding is to be found, I think, in the historical school. In Bluntschli's work, for example, German philosophical ideas are tempered by history and knowledge of practical politics into a shape which need not frighten any fairly open-minded English reader. I mean an English reader who knows German, or at any rate French, for I am not aware that anything of Bluntschli's has been translated in English, though no modern writer on the philosophy of politics and law better deserves a good English translation.

Before we leave this topic of Final or Ethical Jurisprudence, I will remark that, although a theory of the law of nature or of legislation must rest on some definite kind of ethical temper, I do not see why it should formally assume any particular theory of ethics. In either shape—*Naturrecht*, or theory of legislation—there must be some positive conception of the purpose for which the State exists; because that purpose, whatever we consider it to be, fixes the ultimate object of all laws and legislation. This is fundamental and unavoidable. And the conception chosen by the theorist can hardly fail to be associated with one or another side of the standing controversy between the various "Methods of Ethics." But that is no reason why he should take upon himself the burden of a whole ethical doctrine. If he feels moved to write on ethics as well as on jurisprudence, he may do it separately. To take an example you will be familiar with, Austin's second, third, and fourth Lectures appear to me to have no business where they are. They are not jurisprudence at all, but ethics out of place. Still more does this apply to all the expositions of what is called the law of nature, Continental, Scottish and American.

III. There is another branch of legal science of which I have as yet said nothing, and which stands by itself; I mean that which deals with existing or possible relations not between citizens of the same State, but between independent States. International Law will not come before us in this course of lectures, and I need not say much of it here: only we may as well remember that it is a true branch of jurisprudence, notwithstanding all that may be said about its want of sovereign power and a tribunal. You may define it as "positive international morality" not having the nature of true law, but if you do, the facts are against you. For what are the facts?

1. The doctrines of international law are founded on legal, not simply on ethical ideas. They are not merely prevalent opinions as to what is morally right and proper, but something as closely analogous to civil laws as the nature of the case will admit. They purport to be rules of strict justice, not counsels of perfection.

2. Since they assumed a coherent shape they have been the special study of men of law, and have been discussed by the methods appropriate to jurisprudence, and not by those of moral philosophy.

3. There is also a practical test, and a conclusive one. If international law were only a kind of morality, the framers of State papers concerning foreign policy would throw all their strength on moral argument. But as a matter of fact this is not what they do. They appeal not to the general feeling of moral rightness, but to precedents, to treaties, and to the opinions of specialists. They assume the existence among statesmen and publicists of a sense of legal as distinguished from moral obligation in the affairs of nations.

4. Further, there is actually an international morality, distinct from and compatible with international law in the usual sense. As a citizen among citizens, so a nation among nations may do things which are discourteous, high-handed, savouring of sharp practice, or otherwise invidious and disliked, and yet within its admitted right and giving no formal ground of complaint. There is a margin of discretionary behaviour which is the province not of claims and despatches but of "friendly representations" and "good offices."

If therefore we find that our definition of law does not include the law of nations, the proper conclusion is, not that there is no such thing as a law of nations and that we are to talk pedantically of positive international morality, but that our definition is inadequate.

To resume: we have as our total of divisions the following:—

I. Positive Jurisprudence: which is
a. practical.
b. historical.
c. comparative.
d. analytical.

II. Final Jurisprudence, which has a practical side (theory of legislation) and a speculative one (ethical jurisprudence or *Naturrecht*).

III. International Jurisprudence, which again is diversely treated by different authors, and might be, like municipal jurisprudence, subdivided according to their several methods if we were examining it more closely.

Putting aside the law of nations, let us see how and for what reasons one or another of the methods of jurisprudence has in different times and nations had the supremacy. We shall see at the same time that none of them can really subsist alone.

Consider, in the first place, the Roman lawyer of the classical period, as his learning and office are described by Ulpian. He is before all things *iuris prudens*, that is, a lawyer in our special and usual sense of the word; he is skilled and competent to advise in the laws of Rome; not the laws of Plato's Republic on the one hand, nor the particular ordinances of Rhodes or Ephesus on the other. His knowledge is eminently practical. But his practice branches out into more than one direction of science and speculation. There are ancient and half obsolete portions of Roman law which are not yet so obsolete but that an accomplished lawyer must know them. He must therefore be (if he aims at excellence and above common competence) to some extent a historian and an antiquarian. There is every reason to think that the best Roman lawyers were also considerable historical scholars according to their means. This

taste is conspicuous in Cicero, who is for us the standing pattern of the Roman statesman of the later Republic, proud of his own institutions and of his knowledge of them, and at the same time eager to adorn his knowledge with Greek culture and philosophy. Thus Roman antiquities bring in history; and if the historical study was not scientific it was not for want of interest or of acute minds, but because comparative study had not gone far enough to make the scientific treatment of history, and especially of archaic history, practicable. Philosophy comes in by another door, which is opened by the Prætor's Edict. A jurisdiction extending beyond the still narrow bounds of Roman citizenship abandons the strait and archaic forms of Roman custom and procedure. It seeks under the local and peculiar forms principles that may be admitted by the common reason of mankind. The same state of things which made Rome a cosmopolitan power had given a cosmopolitan stamp to the ethical and political speculations of Greek authors. Hence Greek philosophy was ready with speculative justification of the practical wisdom of Roman administrators; and the Romans, having no philosophy of their own, gladly took up the ideas thus offered to them. On the actual substance of Roman law Greek speculation probably left hardly any mark, not even on the prætorian part of it; but on the general conceptions of the State, of law and of justice, it left a good deal. The Roman was taught to look beyond the traditions and statutes of the Quirites for the source and the majesty of the law which was his study. He sought a wider ethical foundation for legal institutions, and delighted to think, as Ulpian says, that his learning was a genuine branch of philosophy. Nothing is easier than to ridicule Ulpian's exordium in detail. Latin is hardly a philosophical language, to begin with, notwithstanding Cicero's efforts to make it so. But it was better that Celsus should define law as *ars boni et aequi*, and Ulpian think the definition perfect,

than that they should think all legal science was contained in the exact framing of an issue, or in discovering what had become of a *nudum ius Quiritium*. And perhaps the definition is not altogether absurd. Why, says our modern critic, it includes morality and all sorts of things that are not law. Let us pause a moment. I have an odd prejudice in favour of making sense of what has been said by men who (to judge from that which is on all hands admitted of their performances) were not likely to talk nonsense. I would rather suspect myself of having missed a shade of meaning than write down Celsus an ass for his definition, and Ulpian for approving it. An "art of what is right and fair" sounds vague enough. But let us expand the phrase a little (without really adding anything of our own): "a skilled application of the principles of right and fairness." Is that so hopelessly unlike the purpose aimed at, if not always accomplished, by lawgivers and courts of justice? Observe, it is *art*, a special and skilled application of knowledge. And that is just what common morality is not; for if it were an art practicable only by specially skilled persons, it evidently would not be morality. Law then, according to Celsus, is so much of the permanent principles of moral justice as is reduced or reducible to a technical system. His definition is a concise, and (as I think) a sufficiently clear statement of the point of view taken in modern times by what I have called Ethical Jurisprudence. But he fails to distinguish, you may say, between what is and what ought to be. True, but his time was not ripe for the distinction. If it could then have been made with the trenchant clearness of Hobbes or Bentham, it is doubtful whether Roman or European jurisprudence would have been any the better. Roman law had to be made broad enough to be in due time the strength of European civilization; and nothing but a large infusion of ethical and cosmopolitan feeling could have done this. Let us not

be over-critical about the form. What more idle fiction is there, philosophically speaking, than the original contract between king and people? Yet without it the English Revolution might never have been accomplished and the Whig party never have taken shape.

Nor was the analytical element wanting in classical Roman jurisprudence, though it was not clearly or separately conceived. Technical ideas were furnished in abundance by the historical tradition of the ancient system, and by the newer and more extensive range of Prætorian jurisdiction. The classical jurists put forth their strength in fixing the bounds of these ideas and developing their consequences. Their method was not consciously analytical, but their work (even when we are not satisfied with its results) is a model of legal analysis. Their tact and sense of analogy go far beyond the region of bare empirical readiness which is still thought by many English lawyers to be the only solid ground of their art. In the Roman treatment of a complex legal idea such as that of Possession we may find all the modern methods employed, and appropriately for the most part. Or instead of taking a subject, let us take the one treatise of the classical period that we have in a fairly complete state. We find in various parts of the Institutes of Gaius distinct and creditable attempts in the direction of historical inquiry (mostly suppressed in the colourless recension of Justinian); the rational and ethical element is marked in his account of modern reforms; there are passages of critical analysis (and the criticism is very good); and in the quotations from Homer, though we may smile at them, there is a germ of comparative jurisprudence. From Gaius vouching the Iliad to help the definition of sale and exchange, to Sir Henry Maine correcting British dogmatism by the phenomena of the Indian village community, seems a long way. Yet, if we read Gaius and his fellows in a spirit neither of letter-worship nor of picking

holes, we can feel at home with them and know that we are working on the same lines.

In modern times the several methods of jurisprudence have been separately and diversely worked out; so diversely as to appear, what they need not and should not be, positively hostile to one another. Here in England peculiar conditions have impressed a peculiar form and character both on our laws themselves and on the study and exposition of them. From an early time our judicial system has been independent of Continental culture, and singularly independent of the other departments of government. The judges have not been a special branch of the profession, but selected, under an efficient criticism of skilled opinion, from the profession at large. Ever since the King's Courts received their definite historical form, the judgments of the King's judges have been accepted as not only deciding the case in hand but declaring the law. From an early time, again, we have had a central and powerful legislature which, as it represents the estates of the whole realm, has made statutes binding on the whole, and knows no legal bounds to its competence. Thus our laws have been eminently national and positive, and our particular legal habit of mind is perhaps the most insular of our many insular traits. Our long standing apart from the general movement of European thought has had its drawbacks; but I think it the better opinion that both in jurisprudence and in the not wholly dissimilar case of philosophy the gain has outweighed them. And I mean this to be understood, in the present case, both of science and of practice. The effect was to make our jurisprudence above all things practical, and then historical. I say historical as distinguished from comparative. You will find in Coke's commentary on Littleton, or better in Sir Matthew Hale's writings, a great deal of historical research, though very little comparison. Doubtless the history and the

fruit of its application suffer much for want of the comparative method. Long ago it was remarked upon as a strange thing that English real property lawyers so much neglected the Continental learning of feudalism. Still our English authors from Coke downwards (or indeed from Fortescue) pay serious attention to the history of their own system. Much of their history is wrong, partly from prejudice, partly from imperfect materials; nevertheless they deserve credit for historical purpose, and for a certain amount of really historical method.

Speculative or analytical treatment of legal ideas, on the other hand, can hardly be said to have existed at all in England before Bentham's day. Such approaches to it as might be discovered in the earlier literature would be confined, I think, to public and especially to constitutional law, and would belong rather to political theories than to jurisprudence proper. Blackstone's constitutional doctrine is not derived from legal sources at all, but is a modified version of Locke's Essay on Civil Government. Ethical topics more or less answering to the *Naturrecht* of the moderns are by no means wanting either in Blackstone or in writers of earlier date, but they occur (so far at least as the common law goes) in a casual and confused manner. We have in this kind the dicta running through several generations of text-writers and judges to the effect that the law of England is the perfection of reason, and the attempts made at various times, notably in the Elizabethan age, to support or adorn its technical doctrines by reasons drawn from general philosophy. The student who has a mind for curious reading may find a notable example in the great case in Plowden on Uses and Consideration, where the law of nature and Aristotle are freely invoked. Efforts of perverse astuteness in the same direction are manifested in the Scriptural reasons and illustrations occasionally given by Coke.

From another side, however, there came to the English system a large and bold infusion of ethical jurisprudence. The decisions of the Chancellor, professing as they did in the earlier days of his Court to be special dispensations of the king's justice in cases for which no ordinary jurisdiction was adequate, were openly founded on ethical and social principles that were adopted on their intrinsic merits. Equity was at length exhausted with victories, and ceased to be creative. But during two centuries or thereabouts before Lord Eldon's time the principles and practice of the Court of Chancery were being settled into the lines which he, more than any one man, finally fixed; and something hardly distinguishable from "the law of nature" was openly put forward as the ground and the sufficient reason of the innovations. We may roughly say that the Chancellors deliberately administered an expansive and inventive justice down to the time of the Revolution, and practically for almost a century later. In the present century the doctrines of equity have been quite as fixed both as to substance and as to procedure as those of the common law; nor have they escaped from creating fresh examples of the mischief they were originally designed to avoid, the sacrifice of convenience and the common reason of mankind to the consistency of technical deductions. These things are of common knowledge to students; but we should also note what is more easily overlooked, the reaction of the methods and spirit of Equity upon the development of the common law. So early as the fifteenth century we find a common-law judge declaring that, as in a case unprovided for by known rules the civilians and canonists devise a new rule according to "the law of nature which is the ground of all laws," the Courts at Westminster can and will do the like. For the most part, however, jealousy of rival jurisdictions only made the common lawyers more

obstinate in their technicality down to a much later time. The rational and ethical tendency became a real power in the common law in the eighteenth century. Lord Mansfield, its most illustrious exponent, sometimes carried it farther than a mature system would bear. But on the whole excellent work was done under this impulse; nor is it correct to regard the movement as confined to commercial law, though its most conspicuous effects were certainly in that department. "He was a bold man," it has been said, "who first invented the common counts." The development of the so-called equitable actions on the common counts for money had and received, and the like, belongs to this period. It is difficult nowadays to estimate the saving in costly and hazardous procedure which was effected by their introduction. The same spirit was also shown, and perhaps to a greater extent than we now have occasion to remember, in positive legislation; for many of the statutes of the first half of the eighteenth century, whose operation has been superseded by later enactments, or has become too familiar a part of our common stock to be matter of express reference, were at the time considerable measures of law reform.

The peculiar character of English legal institutions was strong enough to subdue these new elements to itself. The ideas of a man of genius like Lord Mansfield were worked piecemeal into practice, but no definite theory was constructed by himself or by anyone else, though in the reports and treatises of the last century one is puzzled by language which appears to assume that a complete system exists. There was a serious endeavour for lucidity and form, as against the gratuitous technicality and the literary clumsiness of the only existing legal classics. Blackstone's Commentaries were the outcome of this endeavour, and, all things considered, an admirable

one. But, both in the work of his forerunner Hale and in his own, the arrangement is of the roughest kind, and the analysis of ideas is rudimentary. Their science is historical, but too self-contained and insular for the need of searching analysis to be felt. I need not tell you how Bentham's vehement and often unfair criticism broke the spell that had fortified English jurisprudence as in an enchanted castle, nor of the work of the analytical method, enriched by wider and more enlightened historical research, in the hands of recent and living English authors. The history of the modern scientific movement in our legal studies is written in books which all students who aim at real knowledge must have in their hands, and ought to be familiar with.

On the Continent the order of things has been quite different. Ethical speculation, as we just now said, has almost overshadowed jurisprudence, and has only within the last few generations been sufficiently tempered by positive and historical studies. Probably many reasons of more or less weight might be offered for this. First among them, I think, would come the peculiar position of Roman law during the middle ages. In all the lands which had obeyed Rome, and were included in the nominal supremacy of the revived Western Empire, it had a prevalence and power not derived from the sanction of any distinct human authority. No such authority was for the time being strong enough to compete in men's esteem and reverence with the shadow of majesty that still clung to the relics of Roman dominion. Thus the Roman law was not merely taken as (what for many purposes and in many states it really was) a common groundwork of institutions, ideas, and method, standing towards the actual rules of a given community somewhat in the same relation as in the Roman doctrine *ius gentium* to *ius civile;* but it was conceived as having, by its intrinsic reasonableness, a kind

of supreme and eminent virtue, and as claiming the universal allegiance of civilized mankind. If I may use a German term for which I cannot find a good English equivalent, its principles were accepted not as ordained by Cæsar, but as in themselves binding on the *Rechts-bewusstsein* of Christendom. They were part of the dispensation of Roman authority to which the champions of the Empire in their secular controversy with the Papacy did not hesitate to attribute an origin no less divine than that of the Church itself. Even in England (though not in English practice, for anything I know) this feeling left its mark. In the middle of the thirteenth century, just when our legal and judicial system was settling into its typical form, Bracton copied whole pages of the Bolognese glossator Azo. On the Continent, where there was no centralized and countervailing local authority, the Roman law dwarfed everything else. Yet the law of the Corpus Juris and the glossators was not the existing positive law of this or that place: the Roman law was said to be the common law of the Empire, but its effect was always taken as modified by the custom of the country or city. "Stadtrecht bricht Landrecht, Landrecht bricht gemein Recht." Thus the main object of study was not a system of actually enforced rules, but a type assumed by actual systems as their exemplar without corresponding in detail to any of them. Under such conditions it was inevitable that positive authority should be depreciated, and the method of reasoning, even for practical purposes, from an ideal fitness of things should be exalted, so that the distinction between laws actually administered and rules elaborated by the learned as in accordance with their assumed principles was almost lost sight of. This is not matter of conjecture, for elsewhere similar causes have had similar effects. In India the whole Hindu community acknowledges a kind of ideal Brahmanical

law.* To the Hindu population, broadly speaking, this is what the Roman law was to the mediæval Empire, and in the same kind of way it is largely modified by local, or rather tribal and even family customs. And English administrators and judges, honestly striving to do justice to Hindus according to their own law, have found grave difficulties in discerning the usage actually observed within their jurisdiction from that which native experts in Hindu law declared, on the authority of texts and commentators, as being the rule. The opinions of the Brahman Pandits have constantly tended to ignore particular customs, and it was a considerable time before English magistrates found that they were in danger of imposing on great numbers of people rules which were in truth as foreign to them as English law itself. A still more interesting example is afforded by the United States. There the general foundation of English common law bears the same sort of relation to the positive laws of the several States of the Union that Roman law does to Continental jurisprudence. In every State it is less than the actual law of that State, but greater than the actual law of any other State. And along with this condition of things we find a marked tendency in American authors to take a Continental rather than an English view of the general theory of jurisprudence. Not only our positive and analytical method finds little favour with them, and their theoretical work is mostly akin to that of the German philosophical and historical schools, but they treat the common law itself as an ideal system to be worked out with great freedom of speculation and comparatively little regard to positive

* It is doubtful how far, if at all, the Hindu law books represent anything that ever really existed as positive law. The so-called code of Manu is not a code in either the Roman or the modern sense. Moreover the conflict between Brahmanical theories and local customs is aggravated by sacerdotal ambition. These matters, however, do not affect the limited comparison now made.

authority. Decided cases are treated by them not as settling questions but as offering new problems for criticism. There are even one or two American writers of great ability for whom, as for the German expounders of *Naturrecht*, legal science appears to consist in a perpetual flux of speculative ideas. It is also noticeable that the present generation of scientific American lawyers have shown a disposition for historical research and exposition which has already borne excellent fruit.

The prevalence of one or another method of jurisprudence depends in the first place, if the foregoing considerations be sound, on the historical conditions of legal systems and institutions. But there is no reason why in England, Germany, or America, we should make ourselves the slaves of such conditions, or why one method should be cultivated to the exclusion of the others. The false pride and exclusiveness of a favourite method will always bring their own punishment. A merely practical attention to law brings us into the danger of degrading our science to what Plato calls inartistic routine. Historical interest unchecked by analysis may in another way overwhelm us with particulars, and leave us where we cannot see the wood for the trees: again, the historical scholar is apt to fall into unreflecting optimism, thinking everything must be for the best which is explained as the natural result of historical conditions. Unguarded analytical speculation tends to make jurisprudence a thing of abstract formulas—as it were a sham exact science—instead of a study of human life and action. Excess of zeal for that which ought to be, whether in the shape familiar to us here of agitation for reforms, or in its Continental guise of devotion to the law of nature, tends no less strongly to beget contempt and ignorance of that which is, and expose the would-be philosopher to the derision of the first attorney's clerk. Every method is in its place legitimate and necessary, but

is bound to secure itself against mistakes by taking due account of its fellows. Practically we shall guide our course by looking for what seems most to want doing among the things that come in our way to do. Here in England we have an immense wealth of particular doctrines and principles, which, however, for want of being brought into the light of general ideas, remains uninstructive to the student until he has made a pretty full acquaintance with it in miscellaneous reading and practice. We have likewise a scheme of general jurisprudence due to Bentham's ideas in the first instance, and of which the importance as a part of legal knowledge and education was explicitly laid down from this chair by Austin. Not having been developed from within our particular and historical jurisprudence, but set beside it by criticism from without, and having indeed arisen from a movement of repulsion, this is at present, I think, something too much in the air. English learners run an appreciable risk—which for the moment our attempts at improvement have perhaps rather increased than diminished —of regarding legal science as a thing apart from legal practice. Jurisprudence and Roman law may seem to them nothing but additional subjects of examination imposed by the perversity of fate. Little has yet been done to make it clear that the object of these studies is not to enable English lawyers to talk with an air of knowledge of foreign systems or abstract speculations, but to make them better English lawyers by the exercise of comparison and criticism. There is a want of effectual contact and influence between the general and the particular branches of Jurisprudence, which nevertheless are both needful if either is to do its best. Our most useful ambition at present, I think, will be to supply this want; and it will be my endeavour, so far as my means avail, to work in this direction. I propose to illustrate from English institutions and doctrines the general form and constituents of Positive Law, and a certain

number of its leading ideas. We shall have opportunities both of correcting and enlarging our general ideas by reference to practice, and of criticising particular solutions and consequences from a comparative and general point of view. We shall try to go like wary travellers, neither slavishly following every winding of a beaten road, nor rashly making short cuts over unknown ground to find ourselves confronted by impassable floods or precipices.

FREDERICK POLLOCK.

IV.—THE ENGLISH PROCEDURE ON FOREIGN JUDGMENTS.

I TRUST I shall not be accused of wearisome iteration if I venture to offer a few further remarks on the subject of Foreign Judgments. The point to which I desire now to draw special attention is the manner in which in this country execution on a Foreign Judgment is obtained.

It is strange that while nearly all the nations of Europe, and the Northern States and Southern Republics of America, have dealt more or less satisfactorily with this most difficult question of Private International Law, England has been content to let the matter drift on, supposing that mysterious power her Common Law to be capable of solving the problem and its many riddles as occasions demand. The result must be well-known to all who have endeavoured to deduce one single principle common to the leading cases. Very recently, Mr. Justice Field declared that a Foreign Judgment must be a debt in this country, on the ground merely that in the days gone by an "action for debt" was the only means of enforcing it in Courts hedged in with formalities. And this in the face of the one string of cases beginning with *Alves* v.

Bunbury and ending with *Messina* v. *Petrococchino*, declaring the principle to be *comitas gentium*, and the other string of cases beginning with *Russell* v. *Smyth*, and ending with *Godard* v. *Gray* and *Schibsby* v. *Westenholz* declaring the principle to be a kind of universal moral obligation. I do not however propose to discuss fundamental doctrines, but only to suggest as an alternative for the cumbersome action on a foreign judgment, which I believe to be based on a principle entirely at variance with the doctrines of International Law, and by its great powers of protraction to be capable of working great hardships to suitors, some special procedure which shall work efficaciously for Foreign Judgment creditors not only by its quickness, but also by the soundness of the doctrine on which it rests.

Let me first state very briefly what has been done in other countries.

In nearly all foreign Codes the subject is specially dealt with, generally in the spirit of Section 2,123 of the Code Napoléon:—"A lien does not arise from judgments given "in a foreign country except to the extent to which they "have been declared executory by a French tribunal;" with other sections, more or less numerous, dealing with the application to the Court and with the defences allowed to be raised. In some, a special procedure is established.

GERMANY: Sections 660, 661 of the Code of Civil Procedure of 1877 provide for the obtaining a "judgment of execution"—*Vollstreckungsurtheil*.

ITALY: Sections 941-950 of the Code of Civil Procedure, in like manner provide for the obtaining a "decree of deliberation"—*Giudizio di delibazióne*.

PORTUGAL: Sections 1,087-1,090 of the Code of Civil Procedure of 1876.

VENEZUELA: Section 553 of the Code of Civil Procedure of 1873.

BRAZIL: Special Act of 1878, and decree of 1880 abolishing "reciprocity" as a necessary condition.

With the exception of a form of indorsement of writ, the question is not considered in the Judicature Act.

The difference between the English and what may be called the universal foreign system is therefore this: In England an action is brought *on* a Foreign Judgment: abroad the Courts are moved *to enforce* a Foreign Judgment.

Having endeavoured more than once to point out the grave fundamental error which our system involves,—that it treats the Foreign Judgment debt as a debt of and recoverable in this country; in fact, that the obligation created by the Foreign Judgment is not a territorial (jurisdictional rather) legal one, but of its own strength a universal moral one;—I need not now dwell on the reason why the foreign system appears to be the one more in accord with the doctrines of International Jurisprudence. Such confusion of principle has resulted from the English system that all efforts should be made to dispel it.

The introduction of an Order and Rules on any question is a rapid and efficacious means of attaining legal reform: and I venture to sketch the form of an Order which, removing the old action on the judgment, would meet all the difficulties of the case by the introduction of "motion *to enforce* a Foreign or Colonial Judgment."

The motion to be made to a Divisional Court composed of three judges, the judgment on such motion being final unless leave to appeal is granted:—Notice of motion to be given in manner depending on (*a*) the defendant being in the jurisdiction: (*b*) the defendant being out of, but having property or debts within the jurisdiction: (*c*) it being impossible to ascertain the defendant's address:—The application to be supported by affidavit of service of notice of motion in manner prescribed, that the judgment was duly and regularly obtained, that it is final and that no

appeal is pending, and that the defendant was duly and regularly served with process in the original action according to the law of the country in which the action was brought, such law being proved to the satisfaction of the Court:—The original or an authenticated copy of the judgment, together with a certified translation into English to be produced:—Having heard the defendant if he appear, the Court either to refuse the application or to order execution to issue on the Foreign or Colonial Judgment in the same manner as on an English Judgment:—The Order and Rules not to apply to judgments other than for a debt, damages, or costs:—Nothing in the Order and Rules to be construed as giving authority to the Divisional Court to enquire into the merits of the case decided by the Foreign or Colonial Court, either as to the conclusions arrived at upon the facts, or as to the interpretation or application of any law thereto, or as to any alleged error in its own procedure, or in any other manner to sit as a Court of Appeal upon the decision of the Foreign Court; but the Court not to enforce any Judgment containing anything contrary to the principles of public order in England, nor any Judgment proceeding on a Foreign or Colonial Statute of Limitation; but to take into consideration any alleged fraud, or any error which may be apparent on the face of the Judgment.

F. T. PIGGOTT.



V.—THE INSTITUTE OF INTERNATIONAL LAW AT TURIN.

THE *Institut de Droit International* met on the 11th September, at Turin, and was received with every attention and kindness by the Government and the Municipality. The Old Chamber of Deputies of the Sardinian Parliament was placed at its disposal, and the members were interested to find themselves occupying seats still ticketed as being those of Cavour, Ricasoli, or some other of the founders of Italian Unity. The attendance at a spot by no means central was fairly numerous. Italy was represented by Commendatore Mancini, Minister of Foreign Affairs; and Professors Pierantoni, of Rome, Brusa, of Turin, and Sacerdoti, of Padua. France by MM. Clunet, De Montluc and Clère. England by Mr. Hall, and Professor Holland, of Oxford. Belgium by M. Rolin-Jacquemyns, Minister of the Interior; and Professors Rivier and Arntz, of Brussels, and De Laveleye, of Liège. Germany by Professors Von Bar, of Göttingen, Bulmerincq, of Heidelberg, and Marquardsen, of Erlangen, and M. Perels, Councillor of the Admiralty at Berlin. Austria by Professor Neumann, of Vienna. Switzerland by M. Moynier, and Professor Teichmann, of Basle. Russia by Professors Martens, of St. Petersburg, and Kamarowski, of Moscow. Greece by M. Saripolos.

Members only were present at the morning sitting, which was devoted to private business and elections. The Presidency was offered to M. Mancini, who naturally declined it as incompatible with his position in the Ministry. M. Pierantoni, Professor of International Law in the University of Rome, was then elected President, MM. Neumann and De Laveleye, Vice-Presidents. M. Rivier and M. Moynier were respectively re-elected as

General Secretary and Treasurer. M. Lucas, of the Institute of France, and Count Mamiani were promoted to honorary membership; Messrs. Hall, Pradier-Fodéré and Renault, hitherto Associates, were elected to full membership, and the following were elected Associates:—Professors Carle, of Turin; Gabba, of Pisa; Carnazza-Amari, of Catania; Lomonaco, of Naples; Martitz, of Tübingen; Martens, of Coimbra, Vice-President of the Chamber of Peers, Portugal; Roszkowsky, of Leopol; Lord Reay, and M. Nys, Judge at Antwerp.

The public sitting in the afternoon of the 11th September commenced with speeches of welcome delivered in the name of the King by M. Mancini, and in the name of the City by Count Ferraris, the Syndic. The General Secretary then read his report on the work of the Institute since its Oxford meeting in 1880, with especial reference to the general approval with which the Oxford resolutions on Extradition, and the "*Manuel du Droit de la Guerre*" had been received. He also spoke of the losses which the Institute had sustained by the death of Mr. Bernard, while holding the office of President; of M. Bluntschli, to fitly commemorate whose services to International and Public Law a subscription is being raised throughout Europe and America; and of Messrs. Beach Lawrence, Massé, and Dubois. Other speeches followed with reference to Messrs. Bernard and Bluntschli.

On Tuesday morning, before passing to the order of the day, leave was given to M. Martens, to propose that the Institute should express its disapproval of the decision of the American Courts in the case of the *Springbok* and its dissent from the whole doctrine of "continuous voyages." A long and animated debate was closed by the adoption of an amendment proposed by Mr. Holland to the effect that a review of the decision of a Court in a given case was beyond the competence of the Institute, while

the general question as to continuous voyages would be more properly discussed when the time came for the debate on M. Bulmerincq's report on the Law of Prize.

The report upon the "Conflict of Commercial Laws," drawn up by M. Asser, as Chairman of the second sub-committee of the Committee on the Conflict of Laws, was read for him by M. Sacerdoti. Three resolutions of a general nature affirming the desirability of assimilating the laws of various countries upon this subject were adopted, while the consideration of the more special portions of the report was adjourned.

M. Martens then presented the report of the Committee (No. 4) charged to consider "what reforms are desirable in the judicial institutions actually in force in Eastern countries' with reference to proceedings in which a European or American is a party." A motion by M. Saripolos for the adjournment of the question, no *modus vivendi* with the Ottoman Empire being worth discussion, was negatived, and good progress was made towards the adoption of the report, portions of which were, however, referred back to the Committee for revision. M. Martens, whose work on "Consular Jurisdiction in the East" is well known, remarked in the course of the debate that the English Consular regulations were the best of all those with which he was acquainted. No sitting was possible in the afternoon of the 12th September, when the members were received at the Palace by the Prince of Carignano on behalf of the King. They were also entertained in the evening at a banquet given by the Prince as representing the King. On Wednesday morning, 13th September, further progress was made with the report on jurisdiction in Oriental countries, the questions most debated having reference to security for costs, notices of appeal, and the Court of Appeal in the last resort.

In the afternoon, M. Bulmerincq brought forward his

report, as Chairman of the Committee on the Law of Prize (No. 3). This report consists of a volume of more than 600 pages, and has occupied M. Bulmerincq for several years past. It contains a most valuable account of the Prize Law of each of the maritime countries, supplied by members of the Institute, a disquisition on the true principles of a Law of Prize, and lastly a proposed Code of Prize Law and Procedure consisting of 131 articles. This Code embodies the modern Continental, as opposed to the English and American view of the subject. It exempts the private property of enemies from capture, and minimizes the liabilities of neutrals. The English members present, Messrs. Hall and Holland, therefore thought it their duty in the first place to propose that those portions of the Code which relate to the procedure and to the constitution of Prize Courts, as to which there was no irreconcilable difference of opinion, should be discussed separately from, and previously to, the articles involving changes in the substantive Law of Prize which appeared to them inadmissible. This motion having been negatived, they handed in a long series of amendments to the objectionable articles, and supported them *seriatim*, but only succeeded in carrying two or three of them. The Institute was entertained at dinner in the evening of the 13th September by Count Ferraris, in the name of the Municipality, which also entertained the members on the following morning at the Basilica of the Superga.

The debate on the new Code of Prize Law continued on Thursday afternoon, 14th September, and was concluded on Friday morning, 15th September. The amendments of the English members were regularly defeated by large majorities, and the articles dealing with the Substantive Law of Prize, as opposed to Procedure, which is reserved for further discussion, were voted and ordered to be communicated to Governments. It must, however, be remem-

bered that the new Code, though it no doubt represents the opinion of a majority of the Institute, cannot be taken to express the views of any of its American or English members. None of the American members were present, nor did any of them send written communications upon the subject. The English members present opposed the new Code, in principle and in detail, and were supported in writing by their absent colleagues. On Friday afternoon the debate on Oriental jurisdiction was resumed, and a revised set of draft regulations was adopted and ordered to be communicated to Governments for remark and amendment. Reports were then read on the recent progress and literature of International Law, by M.M. Pierantoni and Brusa for Italy, M. Kamarowski for Russia, and for Germany by M. Bulmerincq, who has succeeded Bluntschli at Heidelberg. M. Moynier announced the adhesion of the United States to the Convention of Geneva, and M. Pierantoni announced that the Italian Government had resumed its negotiations with a view to the assimilation of the law of different countries on the Conflict of Laws.

On Saturday morning, 16th September, the Sub-Committee on the Conflict of Penal Laws made a report, the full consideration of which was adjourned. On the invitation of Professor Marquardsen of Erlangen, it was agreed to meet next year at Munich. The Committees at work in the meantime will be the following :—

I. Conflict of Laws : (1) of civil laws, (2) of commercial laws, (3) of penal laws.

II. Jurisdiction in Oriental Countries.

III. The history and literature of International Law.

The Session closed with the usual votes of thanks, and with a Farewell Speech from the Syndic of Turin.

VI.—CHURCH AND STATE ON THE CONTINENT: THE LAW OF PAPAL GUARANTEES.

THE great question, always agitated, never yet really solved, of the relations between Church and State is constantly in the forefront of Politics on the Continent of Europe. The celebrated Formula of Count Cavour, adopted by Count de Montalembert,—*Libera Chiesa in Libero Stato*,—*l'Eglise Libre dans l'Etat Libre*—has found a distinguished exponent of late days in the land of Cavour, in the person of Cavalier Cadorna, formerly Minister from the King of Italy at the Court of St. James's, and now President of the Council of State in the Kingdom of Italy.*

It is proposed in the present and in a future article to discuss some of the principal points in this *vexata quæstio* which are suggested by Cav. Cadorna's most interesting Essay, itself, we are glad to know, but the herald of a coming work, welcome to every thoughtful student of the Science of Politics as the result of long acquaintance with men and their Rulers.

It is with special pleasure that we in this *Review* hail every approach to the solution of the great problem of Church and State from its strictly Juridical side, the side from which it is approached by Cav. Cadorna. For the question is one which can really only be treated dispassionately under its Juridical aspect. When once Theology, or mere Party politics, or even enthusiastic National sentiment, has got a hold upon it, we may as well bid farewell to the chance of arriving at a peaceful solution. We cannot look at the question of Church and State in France, in

* C. Cadorna. Illustrazione Giuridica della Formola del Conte di Cavour, Libera Chiesa in Libero Stato. Estratto dalla *Nuova Antologia*. Roma: Tip. Bodoniana. 1882.

Belgium, in Germany, in Switzerland, and least of all, perhaps, in Italy, either solely from the point of view of the State, or solely from the point of view of Rome, with any hope of ultimate pacification. For there is a Secular as well as a Clerical "*Non possumus*," and either brings us to a dead-lock.

Nor can we eliminate from our consideration the alteration in the relations between Church and State caused by the Vatican Council. The alteration itself is a fact. It was very clearly foreseen by several prominent Diplomatists of 1870-1, and it is a fact which no Statesman can afford to lose sight of. This alteration is none the less real because it is not on the surface. Outwardly, we have still before us the imposing aggregate of the Hierarchy of the Latin Church, headed as of old, by the *Apostolicus*, the sacred Supreme Pontiff, the *Pastor Gregis* of a Flock scattered through every quarter of the world. But if we look within, if we study history, especially if we study the history of the Vatican Council, we shall very probably come to the conclusion at which most Statesmen have arrived, that a radical change has almost silently been effected. Almost, not quite, silently. For voices were raised in the Council Hall itself, ill adapted as it was for the sound of an Opposition voice. Almost, not quite, silently. For the dying protests of "a certain Charles," for whose soul it is believed that Pius IX., yielding so far to public feeling, had a half-hearted, hole and corner Mass said, at a remote church in the Trastevere, have not been hidden from the world. And the world knows that Charles Forbes de Montalembert, Patrician of Rome, had the welfare of the Church deeply at heart, and it knows him best of all, perhaps, as the upholder of a Formula, identical in wording with that of Camillo di Cavour, "l'Eglise Libre dans l'État Libre." And the world knows that it was at the General Sessions, on the 20th and 21st August, 1863, of

the Catholic Congress of Malines* that these words were spoken, in a Congress presided over by Cardinal Sterckx, Archbishop of Malines, and of which the late Cardinal Wiseman, and the Roman Prelates Nardi and Manning, were members, not to speak of the Belgian Episcopate, who have in recent times seemed to be more Papistical than the Pope himself. There could not, in fact, have been a more striking occasion, a more remarkable gathering, than that which had for its crown of glory the oratorical triumph of Count de Montalembert. The glowing fervour of the son of the Crusaders, the unquestionable orthodoxy of the historian of the Monks of the West, would in themselves have commanded the attention of an audience much less predisposed in his favour. They expected a great oratorical treat, and they got it to the full, and brimming over. For the words adopted from Cavour by Montalembert have gone on vibrating through the air in the troubled times that have come upon Western Europe since 1863, like echoes from some far away Golden Age. They come back to us, from time to time, in a world full of trials and of difficulties as echoes of the words of the Sages, *Responsa* of the *Prudentes* of old, golden sayings of Montalembert, the Patrician of Rome, and Cavour, the Father of United Italy. So these words come down the stream of Time, hallowed by many a memory of mingled joy and sadness—joy for all that has come to pass of that which these great men of old dreamed of,—sadness for all that has been left undone of the task which they left us to finish. How great that task still is, it needs but a little looking abroad to see.

Turn we our eyes to France, "eldest daughter of the Church," fatherland of Montalembert, we see Ministry succeeding Ministry in bewilderingly quick succession, not

* "L'Eglise Libre dans l'Etat Libre." Discours prononcés au Congrès Catholique de Malines par le Comte de Montalembert. Paris. Douniol: Didier Frères. 1863.

one of them, so far as can be traced, either trusting the Church, or trusted by it. And it is difficult to believe that it could be otherwise with any Ministry, be Leo XIII. never so charming socially. Pius IX. was also, by universal repute, very charming as a man,—except, perhaps, to "Liberal Catholics,"—but as Pope, he gave the finishing touch to the antagonism between Church and State on the Continent of Europe. It was, in truth, the first "Prisoner of the Vatican" who bound the Church most effectually with the links of iron of the chain, "*Non possumus.*"

Turn we to Belgium, we find the sharpest of lines drawn in the field of Party politics between "Clerical" and "Liberal." We have but to open at random the pages of the *Belgian News* or the *Echo du Parlement*, to see the same testimony borne by independent witnesses. We find the Bishops seeming at times to out-Papalise the Pope. We hear of difficulties about the marriage of persons who were guilty of no greater Theological enormity than that of being Teachers in Government Schools. We hear of difficulties about burials, threatening to import Guibord scandals from Canada into Belgium. And with what result? Only, it is to be feared, the result of increasing tenfold, a hundredfold, the distance of the prospect of that golden dream of Montalembert and Cavour, a "Free Church in a Free State."

Turn we to Germany, and we see a Chancellor at one time raising the old Imperialist cry, "We will not go to Canossa," at another, sending confidential embassies to the Vatican, but, practically, to all appearance, gaining and giving nothing. The political schemes of Varzin seem capable of great elasticity, and able to make at least temporary common cause with very varied aspects of political and ecclesiastical Thought. That there will ever be more than an armed neutrality between Varzin and the Vatican, however, it is difficult to believe, and where Rome

does not expect any substantial gain, it would be contrary to reason and to History to expect to see her give. The mediæval tradition concerning Rome is probably as true to Curialistic politics and to Curialistic nature in the days of a Leo XIII., as it was in the days of a Boniface VIII. "*Habe pro constanti, soli favet danti.*"

If this be the case, the real question at issue in the Diplomatic controversy with the Vatican is, What is the World, *i.e.*, in other words the State,—able and willing to give the Roman Church in exchange for either her active support, or her non-intervention in the internal affairs of the State?

Technically, of course, the Curia would most likely disclaim the idea that it ever does so intervene, but the Vatican Decrees are before us, and the region of Morals is very wide. How wide, nay how illimitable, has been forcibly pointed out by no less distinguised a Statesman than our present Premier. Yet Mr. Gladstone himself,—though after a somewhat roundabout fashion, it is true,—would appear to have found it necessary to enter into some sort of negotiations with the Vatican. Even if nothing should come of it all, it must be some consolation to the Prisoner of the Vatican to find himself thus sought after. And, under the circumstances, the Curia might well be excused for thinking that these various "*pourparlers*" indicate an approaching submission to the Dogma of the Temporal Power, if not to the Dogma of the Constitution *Pastor Æternus*. And it would perhaps put up, not very reluctantly, with such a *modus vivendi*, if only the States of that wicked World which has left the Prisoner to his fate would yield so much to his demands. In this branch of the question of Church and State, Italy has a paramount interest, and in Italy, as Cav. Cadorna pointedly insists,* the application of the Cavourian formula is a Political and National necessity. In other countries it is only a question

* *Op. cit.*, Pt. I., p. 16.

of Liberty. In Italy, if we read Sig. Cadorna's words aright, it is a question of National life and death. The gravity of this issue cannot be over-estimated, and it is impossible not to feel how it complicates the Political situation throughout Europe, on all matters wherein the Roman Curia asserts the interests of the Church to be involved. And Peter's net is a far-reaching one: it may be touched at most unexpected points. Moreover there is no country, however opposed to the policy of the Curia and to the dominance of a clergy taking their *mot d'ordre* from Rome, that has not some loose joint in its Constitutional armour through which Rome may regain, at least temporarily, her lost influence.

The Helvetic Confederation has openly opposed the reception of the Vatican Decrees, and dismissed Roman Prelates "*in partibus*" over her frontier. But the very Liberalism of the Constitution of some of the leading Cantons,—or what is supposed to be their Liberalism,—has opened the way to the return of the Vaticanist clergy, and to the proportionate weakening of the ranks of the clergy who have rejected Vaticanism. Election of Parochial clergy by the registered electors of their Confession has brought back the *révoqués*, the dispossessed Roman clergy, to most of the Presbyteries of the Bernese Jura from which they had been ousted for six years. This fact may, perhaps, serve to suggest that Italy did not in all probability lose much of a support to the cause of "*Libera Chiesa in Libero Stato*," when the very few cases of such election which have been ventured upon, as *e.g.*, at S. Giovanni del Dosso, in the Mantovano, practically came to nought, and what seemed to some the dawn of a great Reform gradually faded out of sight. Yet it would be true to say of Election, whether to the Episcopate, or to the charge of Parishes, that it would be a Revival rather than a Reform: a revival, indeed, of an ancient feature of the

Ecclesiastical Law of Western Europe, to which the Church of Milan and the Church of Rome alike bear testimony as the practice of the greatest of Western Sees in the days of some of their most illustrious occupants. From this point of view its failure to establish itself in Italy may be regretted. The fact that the system has been turned to the profit of Curialistic policy in Switzerland should be considered rather as a warning than as a discouragement, and forewarned should be forearmed. Returning to the consideration of the Italian aspect of the question, we are led to ask ourselves what is the Juridical position of the Pope in the eyes of the Kingdom of Italy. In other words,—what is the nature, and what are the dispositions of the Law of Papal Guarantees?

The Premier, Depretis, recently said to his constituents at Stradella, that the present Government could not go beyond the limits of that Statute. It may well be doubted whether any Italian Government that desired to live could go beyond the Law of Papal Guarantees: and most Governments have the desire for life strongly rooted in them. So much for the Liberal view.

The Clerical party throughout Europe, on the other hand, openly declares the situation "unsatisfactory and untenable." Such is the tenor of some of the very latest utterances of that party at a gathering at Poperinghe, in Belgium, of the "Federation of Associations [Cercles] for West Flanders," reported in the *Echo du Parlement* of Brussels, for 20th October. And the "Federation" expressed in the strongest terms its view that the "Head of Christendom is not sufficiently protected against outrages and acts of violence." So neither is Christendom itself, according to the West Flanders devotees. How then, it may be asked, shall both the Pope and Christendom be protected? The *Zelanti* of Poperinghe have their answer ready. "It is a duty for Europe," they tell us, "no longer to suffer

that the Papacy be oppressed: the existing state of things is a danger not only for the Church but also for the Nations, by reason of its illegality and of the disorder that reigns."

If the Law of Papal Guarantees be "illegal," it would seem to be superfluous to discuss its utility. But the thing is conceivable only from an extreme *Zelante* point of view. It can only be so held by the party which has not assented to it, but which yet sometimes throws out suggestions of the possible acceptance of the Law under an International Guarantee. Where this ground is taken, it would appear to be conceded that the Law itself is not intolerable, but that it is held to need a more than Municipal Sanction. The question then becomes one of detail, not of principle. The *ipsissima verba* of the Law, here presented in an English version, will necessarily afford the best means of forming an opinion on this question, and it is believed that such a version will not only be useful to many who have never studied the original, but will also be the first English translation offered to the public.

THE LAW OF PAPAL GUARANTEES, 1871.*

Victor Emmanuel II., by the Grace of God and the Will of the Nation, King of Italy.

The Senate and Chamber of Deputies have approved,

We have sanctioned and do promulgate as follows:—

TIT. I.

PREROGATIVES OF THE SUPREME PONTIFF, AND OF THE HOLY SEE.

Art. I. The person of the Supreme Pontiff is sacred and inviolable.

* Translated from the Italian text, printed by Sir Robert Phillimore, *International Law* (3rd Ed., 1882), Vol. II., App. vii., pp. 655-9, and the contemporary French text, *Loi relative aux Garanties accordées au Pape et au Saint Siège, &c.* Florence, Imp. Botta, 1871, kindly furnished to the writer for the present purpose, by His Excellency Count Menabrea, Ambassador from the King of Italy at the Court of St. James's.

Art. II. Attempts against the person of the Supreme Pontiff, and incitement to such attempts are punished with the same penalties as are enacted (*stabilite, établies*), in the case of attempt and incitement against the person of the King.

Public offences and insults (*ingiurie, injures*), committed directly against the person of the Pontiff by word (*discorsi, paroles*) by deed, or by the means enumerated (*indicati, indiqués*) in Art. 1 of the Press Law, are punished with the penalties enacted in Art. 19 of that law.

The above offences (*reati, délits*) are public offences (*d'azione pubblica, d'action publique*), and within the jurisdiction (*competenza, du ressort*) of the Court of Assize. Discussion on religious matters is perfectly free.

Art. III. The Italian Government renders Sovereign honours to the Supreme Pontiff within the territory of the kingdom, and continues to him (*gli mantiene, lui conserve*), the pre-eminence of Honour allowed to him (*riconosciutegli, reconnues*) by Catholic Sovereigns. The Supreme Pontiff is at liberty (*ha facoltà, a la faculté*) to keep up the accustomed number of Guards about his person, and for the custody of the palaces, without prejudice to the obligations and duties laid upon such Guards by the existing laws of the kingdom.

Art. IV. There is preserved in favour of the Holy See the endowment (*dotazione, dotation*) of an annual income (*rendita, rente*) of 3,225,000 francs (*lire*). By means of this sum, equal to that inscribed on the Roman Budget (*bilancio, budget*) under the titles, Sacred Apostolic Palaces, Sacred College, Ecclesiastical Congregations, Secretariate of State and Diplomatic Body abroad (*Ordine Diplomatico all'estero*), it is intended to make provision for the Income (*trattamento, traitement*) of the Holy Father and for the various Ecclesiastical needs of the Holy See, for ordinary and extraordinary maintenance of order, and for the custody of the Palaces and their dependencies; for the

salaries (*assegnamenti, honoraires*), presents (*giubilazioni, retraites*) and pensions of the Guards mentioned in the preceding Article, and of the servants (*addetti, attachés*) of the Papal Court, and incidental expenses (*spese eventuali, dépenses éventuelles*); as well as for the ordinary maintenance and custody of the annexed Museums and Library, and for the salaries and pensions of those employed there.

The endowment (*dotazione, dotation*) above-recited shall be inscribed in the Great Book of the Public Debt, in the shape of a perpetual and inalienable Income in the name of the Holy See, and during the vacancy of the See it shall continue to be paid, to supply all the needs of the Roman Church during that interval.

It shall remain free from every kind of tax or burden, Governmental, Communal or Provincial, and shall not be liable to diminution even if hereafter the Italian Government should resolve to take upon itself the expenses connected with the Museums and Library.

Art. V. Besides the endowment (*dotazione, dotation*) decreed in the preceding Article, the Sovereign Pontiff continues to enjoy the Apostolic Palaces of the Vatican and Lateran, with all the buildings, gardens, and grounds annexed thereto, and dependent thereon, besides the Villa of Castel Gandolfo with all its appurtenants and dependencies. The said Palaces, Villas, and their dependencies, as also the Museum, the Library and the Artistic and Archeological Collections therein, are inalienable, free from all tax or burden, or expropriation for Public utility.

Art. VI. During the vacancy of the Holy See, no judicial or political authority shall in any way whatsoever hinder or limit the personal liberty of the Cardinals. The Government undertakes to prevent any external violence from troubling sittings of the Conclave and of Œcumenical Councils.

Art. VII. No public officer or agent of police (*agente della*

forza pubblica, agent de la force publique) shall have the power in the exercise of the functions of his office, to introduce himself into the Palaces and places habitually or temporarily resided in by the Pope, nor into any place where a Conclave or an Œcumenical Council may be assembled, unless authorised by the Pope, the Conclave, or the Council.

Art. VIII. It is forbidden to search or make perquisitions in the offices of the Pontifical Administrations or Congregations, which are invested with a purely spiritual character, or to seize any of their Papers, Documents, Books, or Registers.

Art. IX. The Pope is absolutely free to exercise all the functions of his spiritual ministry, and to post up (*fare affiggere, faire afficher*) all acts emanating therefrom on the doors of the Basilicas and churches of Rome.

Art. X. These ecclesiastics who by reason of their charges take part in Rome in the acts of the spiritual Ministry of the Holy See, shall not, in consequence of such acts, be subject to any investigation or control (*sindacato, contrôle*) on the part of the Authorities (*autorità pubblica, autorité publique*).

Every Foreigner invested with an ecclesiastical office in Rome shall enjoy the personal guarantees secured to Italian citizens in virtue of the Laws of the Kingdom.

Art. XI. The Representatives of Foreign Governments at the Holy See enjoy in the Kingdom all the prerogatives and immunities which belong to Diplomatic Agents in virtue of International Law. The Penal sections applicable to Offences against the Representatives of Foreign Powers accredited to the Italian Government shall be applied to offences against the said Representatives.

Art. XII. The Pope corresponds freely with the Episcopate and with the whole Catholic world, without any interference (*ingerenza*) on the part of the Italian Government.

With this view power is granted to him to establish in

the Vatican, or in any other residence, Post and Telegraph Offices served by a staff of his own selection.

The Pontifical Post Office shall have power to correspond directly, under closed packets, with Foreign Post Offices, or to hand over its correspondence to the Italian offices. In either case, the carriage of despatches or correspondence franked by stamps of the Pontifical Office, shall be exempt from all tax or charge on Italian territory. Couriers sent in the Pope's name are assimilated in the Kingdom to the Cabinet Couriers of Foreign Powers.

The Pontifical Telegraph Office shall be placed in communication with the Telegraphic Service of the Kingdom at the expense of the State. Telegrams transmitted by the said Office and authenticated as Papal (*Pontificii*) shall be received and sent with the privileges accorded to State Telegrams, and free from all tax in the Kingdom.

The Telegrams of the Pope, and any signed by his order, franked by the stamp of the Holy See, which may be presented at any Telegraph Office of the Kingdom, shall enjoy the same advantages.

Telegrams addressed to the Pope shall be free from all payments accustomed to be made by the recipient.

Art. XIII. In the city of Rome, and in the six Suburbicarian Dioceses, the Seminaries, Academies, Colleges, and other Institutions founded for the instruction and education of Ecclesiastics, shall continue to be solely under the Holy See, without any interference (*ingerenza, ingérence*) on the part of the Educational Authorities of the Kingdom.

TIT. II.

RELATIONS OF THE STATE WITH THE CHURCH.

Art. XIV. All restriction of the right of assembly on the part of members of the Catholic clergy is abolished.

Art. XV. The Government renounces the right of the Apostolic Legation (*Legazia*) in Sicily, and the right of

nomination, or proposition, in the collation to the major benefices throughout the Kingdom.

Bishops shall not be required to take the oath to the King. Major and minor benefices can only be conferred on citizens of the Kingdom, save in the City of Rome and the Suburbicarian Dioceses. No change is made as to the collation to benefices in the gift of the Crown.

Art. XVI. The *Exequatur* and Royal *Placet* are abolished, as also every other form of Government assent to the publication and execution of the acts of the Ecclesiastical Authorities.

Nevertheless, so long as a different provision shall not have been made by the Special Law mentioned in Art. XVIII., the acts of the said Authorities, in so far as they concern the destination of Ecclesiastical Property and the collation (*provvista, collation*) to major and minor benefices, save in the City of Rome and the Suburbicarian Dioceses, remain subject to the Royal *Exequatur* and *Placet*.

The dispositions of the Civil Law are maintained with regard to the creation and mode of subsistence of Ecclesiastical Establishments and the alienation of their property.

Art. XVII. In Spiritual and Disciplinary matters, reclamations or appeals against the acts of the Ecclesiastical Authorities are not admitted, and the forcible execution of such acts (*esecuzione coatta, exécution par contrainte*) is neither recognised nor allowed. The cognisance of the Juridical effect of such acts or of any other acts of the said authorities belongs to the Civil Jurisdiction.

Nevertheless such acts are void of effect if they are contrary to the Law of the State, or to Public Order, or if they violate individual rights, and they are subject to the Penal Law if they constitute a delict.

Art. XVIII. A subsequent Law shall provide for the re-organisation, the conservation, and the administration of Ecclesiastical property in the Kingdom.

Art. XIX. Every disposition actually in force is abrogated with regard to the subject-matter of the present Law, in so far as it may be contrary thereto.

We do order that the present Law, confirmed (*munita, munie*) by the Seal of State, be inserted in the Official Collection of the Laws and Decrees of the Kingdom of Italy, and do command all whom it concerns to obey it and cause it to be obeyed as a Law of the State.

Given at Turin, 13th May, 1871.

(Signed) VICTOR EMMANUEL.

(Countersigned) G. LANZA.
E. VISCONTI-VENOSTA.
GIOVANNI DE FALCO.
QUINTINO SELLA.
C. CORRENTI.
C. RICOTTI.
G. ACTON.
CASTAGNOLA.
G. GADDA.

Having now placed the readers of the *Law Magazine and Review* in possession of the full text of a very important document, which is unquestionably of International interest, though not itself a part of the Public Law of Nations, it must be reserved to a future article to enter upon the consideration of other questions raised by Cav. Cadorna's "Juridical Illustration of the Formula of Count Cavour—'*Libera Chiesa in libero Stato.*'"

C. H. E. CARMICHAEL.

VII.—SELECT CASES ON MARRIED WOMEN'S PROPERTY LAW, U.S.A.

AT a time when our Legislature has just effected a change in the Law relating to Married Women's Property, which appears in many respects to be very radical, it seems not inappropriate to offer for the consideration of our readers a selection of recent cases on this branch of Law from the Supreme Court, and from the State Courts of several States in different parts of the Union.

It is hoped that these cases will be found fairly illustrative of points such as may arise hereafter in our own Courts, and that they may be useful by way of reference when the new Act shall come before the judges for interpretation.

* * *

ARKANSAS : SUPREME COURT. *Watson* v. *Billings*. April 15, 1882.

Relinquishment of Dower by Married Women Under Age—Marriage does not Confer Capacity to Contract or Convey.

Mrs. Billings, a married woman, seventeen years of age, duly relinquished dower in a deed executed by her husband, and duly acknowledged the same, informing the Justice who took the acknowledgment that she was twenty-one years old. After the death of her husband she filed her bill for dower in the lands so conveyed :

Held (1.) Marriage gives an infant *femme covert* no additional capacity to contract or convey.

(2.) In this respect there is no difference between a conveyance and a relinquishment of dower.

(3.) The relinquishment was voidable as to her.

This suit was begun in 1873, after the passing of the Act of 1873, making females of full age at eighteen, when she was nineteen years of age, and her husband having died in 1872, she had been *discovert* but one year. There was nothing to show an affirmance in the interim, and the bringing of the suit was in apt time, and was in itself an affirmance.

NEBRASKA : SUPREME COURT. *Gerhold* v. *Wyss*. June 21, 1882.

Husband and Wife—Incapacity of Wife to Make Marriage Contract.

A man formally married to a woman who, because of her insanity, which he discovered soon afterwards, was incapable

of entering into the marriage contract, and continuing thereafter to voluntarily cohabit with her as his wife, is under legal obligation to support her; and, having furnished support, he cannot upon a decree of separation on the ground of the invalidity of the marriage, make the same a charge against her separate estate.

PENNSYLVANIA: SUPREME COURT. *Chase* v. *Hubbard.* January and February, 1882.

Married Woman—Liability on Joint Bond with Husband

In an Action on a Bond executed by a *femme covert* and her husband to secure the purchase-money of land sold to them, the Court, on a plea of coverture, instructed the Jury that there could be no recovery against the *femme covert*, on the ground that at the time of executing the Bond she was a married woman:

Held to be error. But, where all the facts of the case are developed upon another plea, and the Jury upon those facts render a verdict in favour of the *femme covert* and her husband, *held* that it renders the technical ruling of the Court below on the plea of coverture of no moment whatever.—From *American Law Magazine* (Chicago, Ill.), Vol. I., No. 6, August, 1882.

FLORIDA: SUPREME COURT. *Martinez* v. *Ward*. *Per* Randall, C.J., June Term, 1882.

Married Woman—Free Dealer—Liability.

Ch. 3,130, Laws [of Florida] of 1879 (McClellan's Digest, p. 713), providing that a married woman may by petition and proofs become a free dealer, &c., as if unmarried, under a decree and license granted by the Circuit Judge in Equity, does not attempt to confer legislative power upon the Judge, and is not unconstitutional upon the ground that the action of the Judge is not judicial in its character.

A married woman, so licensed, may purchase goods for cash or on credit, and engage in trade as though she was not married, and the fact that he [*sic*, meaning the husband, we presume], has signed a note with her and joined in a mortgage to secure it, the note being given for money borrowed by her and for her separate use, and no part of it having been paid by him, gives him no interest in the money, or in goods purchased by her with it for the purpose of trading on her own

account, and his creditors cannot subject it to the satisfaction of his debts,

A married woman, so licensed, may employ her husband as clerk or assistant in the business carried on by her as a trader, he having no other interest in the concern, without subjecting the goods to the payment of his debts beyond the value of his services over and above the expense of supporting him and his family. The purpose of the Act was to enable a married woman, so licensed, to engage in trade and accumulate property in her own right and not liable to be subjected to the payment of the debts of an insolvent husband.

Staley v. *Hamilton, et al.*—*Per* Randall, C.J., *ut suprà.*

Married Woman—Separate Property—Charge Upon.

Where money is loaned upon the urgent importunity of a wife and the husband, for the use of the husband, the wife joining him in making a promissory note for the money, she being possessed of separate real property, and not giving a valid security by mortgage or otherwise on such property, Equity will not charge her separate property with the indebtedness. The only manner in which a married woman, living with her husband, can create a charge upon her separate property for an indebtedness not incurred on account of the beneficial nature of the consideration as enuring to the benefit of her property or estate, is by some deed, mortgage, or other instrument of writing duly executed and acknowledged according to the statute.

A charge upon a married woman's separate property may arise in Equity, where it must necessarily be inferred from the fact that the debt is contracted for the benefit of her property or estate, in analogy to the doctrine of equitable lien for purchase-money, that she intended the payment to be made out of her own property, or where, living separately from her husband, the debt is contracted by him for her own personal benefit.

SUPREME COURT, U.S.A., on Appeal from U.S. CIRCUIT COURT for Southern District of Mississippi. *Hewitt et al.* v. *Phelps et al.* *Per* Matthews, J.

Married Woman—Trust Estate.

A married woman grants an estate to a trustee upon trust for her sole and separate use, remainder to her children, and

appoints her husband agent and co-trustee to manage the estate, providing that the trustee shall not be liable for his acts. The deed gives neither the trustee nor the husband a right to charge the trust estate for the expenses of managing it. Parties who furnish supplies to her husband for the estate, alleging that they were used on the estate by the trustee after the husband's death, and that the husband and trustee were both insolvent, and that the trustee would have the right to charge the same against the estate in his accounts, attempt to enforce an equitable charge therefor against the estate:

Held that as neither the husband nor the trustee had the power to charge the estate, the creditors did not have any claim of subrogation, nor any ground of enforcing against the estate the payment of their demand.—From *American Law Magazine* (Chicago, Ill.), Vol. I., No. 7, September, 1882.

VIRGINIA: SUPREME COURT OF APPEALS. *Averett, Trustee, &c.* v. *Lipscomb*. April Term, 1882.

A testator devised certain real estate to his grand-daughter, and directed that it should be held by a guardian or trustee appointed by the Court, until she arrived at age or married, and should be settled to her separate use, so that neither said property, its proceeds, or profits, should be liable for the contracts or debts of her husband. The daughter [*sic*, Qy. grand-daughter] married, and she, her husband, and the Trustee, attempted to sell and convey her property:

Held they had the full power to sell and convey the property, and to make a good, equitable title thereto. Whilst negative words are not indispensable to restrain the alienation of property devised or conveyed to the separate use of a wife, and mere restraint may be implied, yet the circumstances which will warrant such implication must be plain.—From Opinion of Court *per* Burks, J., in *Virginia Law Journal* (Richmond, Va.), September, 1882.

Quarterly Notes.

The Annual Meetings of the American Bar Association cover a wide field of subjects interesting to members of the Legal Profession in our own country as well as in the United States. We are indebted to the courtesy of the Treasurer of the Asssociation, Mr. Francis Rawle, of Philadelphia, for the Report of the Fourth Annual Meeting at Saratoga in 1881, which forms a volume of goodly dimensions. The discussions ranged over numerous points touching International Law, Constitutional Law, Judicial Administration and Remedial Procedure, Legal Education, &c. We observe that the Committee on a National Bankrupt Law for the Union came to the conclusion that "Congress cannot vest in the State Courts the power to execute a National Bankrupt Law." That is to say, the Committee was of opinion that the real gist of the difficulty lies in the carrying out of such a law if passed. The State Courts have jurisdiction in the State for which they are constituted. Can they be given the power to exercise authority over the rights of persons outside the borders of such State? This, the Committee appears to have held, would be, in effect, "to create and confer a new jurisdiction upon the State Courts, which it is not in the power of Congress to do." Obviously there would be little or no use in passing a Federal Law if it could not be executed by the Courts of the several States, though we suppose even in this case the Supreme Court of the United States could give effect to it. The whole question of a Federal Bankruptcy Law being, as the Chairman of the Committee, Mr. Rufus King, of Ohio, remarked, at a deadlock, it was eventually decided to hold over the Report for further consideration at the next annual meeting. We

shall be curious to see the result which may be arrived at this year, when the Association again meets at Saratoga. From the lively debate which arose on a proposed resolution recommending the institution of a "Commission of Legislation" in connection with the Legislative Department of State Governments, we gather that Cæsar and Pompey are very much alike. The complaints made at Saratoga as to the perpetually recurring process of "patching" which American Statute Law undergoes, seemed like echoes of complaints constantly brought against the existing state of things at St. Stephen's. During the discussion of an able and forcible paper by Hon. T. M. Cooley, of Michigan, on "The Recording Laws of the United States," Mr. Semmes, of Louisiana, besides much other interesting detail of the *differentiæ* of the practice and procedure of his State, gave some valuable information bearing upon the non-recognition of extra-territorial oaths in Louisiana, showing by his account that very similar difficulties exist in some States of the Union as were lately noticed in this *Review* by Sir Sherston Baker, with regard to practice on the Continent of Europe. We shall look forward with much interest to the next Report of the American Bar Association.

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There appears to be no lack of enterprise in the United States in the matter of publishing legal journals. We have lately received the first number of two such fresh ventures, the *American Law Magazine* (Chicago, Ill.), and the *Alabama Law Journal* (Montgomery, Ala.). The former is, as its name imports, intended to take a broad survey of the American juridical field; the latter, as is similarly imported, devotes itself principally to the reporting of its own State Courts, together with cases of general or special interest in other Courts and in the Supreme Court, U.S.A., and reflects considerable credit on the local printers. We hope

that both our new contemporaries will make good their position, and serve the cause of sound and progressive Law Reform in the United States. We do not seem to be ourselves familiar with the "attorney with his green bag," referred to as an existing English institution at p. 44 of No. 1 of the *American Law Magazine*.

* * *

We observe with some surprise that our old-established contemporary, the *Canada Law Journal*, for June 1st, 1882, exemplifies in a rather remarkable manner the adage, *Aliquando dormitat bonus Homerus*. For in the number above cited it records under the heading "Articles of Interest in Contemporary Journals," the following articles which appeared in our May number:—"The Family Laws of England and Islam; Evidence of Foreign Laws; Suzerainty, Mediæval and Modern; Early English Land Law;" and credits the whole series to the *American Law Review* for May, in which they did not appear. As a matter of fact, the subjects with which our able Boston namesake, the *American Law Review*, really did deal in the articles in its May number were totally different, viz., the "Rights and Liabilities arising through the promotion and formation of a Corporation, Part II.," and "Constructive Total Loss." We have great pleasure in mentioning the actual contents of the *American Law Review* for May, as deserving of careful perusal on the part of readers interested in Commercial and Maritime Law.

* * *

The *Revista de los Tribunales* of Madrid, in its number for 30th August, commences a discussion, which promises to be of some interest, on the true interpretation of Articles 531 and 617 of the Penal Code. The difficulties which the *Revista* desires to point out arise in the main, it would

appear, from a system of patchwork not unknown in the Legislation of other countries besides Spain.

* * *

The *Boletin de la Revista de Derecho y del Notariado* of Barcelona, in its issue of the 15th August, reprints from the *Gaceta del Notariado* an article expressing in the main its own views on the Future of the Notarial Profession. The line taken is that the Profession can only be saved by the reconstitution of a Notarial School, as a Section in the Faculty of Law, granting the degrees of Licentiate and Doctor in the said Faculty for that section. It is also urged that candidates for the position of Notary should only be allowed from the proposed section, saving existing interests. In Italy the Notarial Profession seems to be in a more flourishing condition, judging from the Report of the Third Congress of Notaries of the kingdom of Italy, held in Milan, 31st May,—6th June, of which an account is given in the number for June—July of the *Circolo Giuridico*, of Palermo. The two previous Congresses were held respectively in Naples and Rome. The Milan Congress was presided over by Commendatore Angelo Villa Pernice. Among those who took part in the proceedings were the well-known historian Cesare Cantù, Superintendent at the Archives of State, the Procurator General Commendatore Oliva, the Prefect of Milan, the representative of the Syndic of Milan, the First President of the Court of Appeal, and others. One of the Resolutions passed at the Milan Congress is worthy of special notice from its practical identity with the views expressed in the Spanish Notarial Press. It was resolved that graduation in Jurisprudence ought to be obligatory on candidates for the position of Notary; that concurrently with the course of Notarial Practice, extending over two years, a course of Practice should also be followed under a Procurator; and,

lastly, that Notarial Law should be taught to candidates for the Notarial branch in the ordinary courses of Lectures on Jurisprudence.

* * *

The International aspects of Bankruptcy afford at once some of its most interesting and most difficult aspects. The question of "Saisie-Arrêt" in France by an Alien creditor is one of these, and it has recently been ably treated from what may perhaps be called a Liberal Juridical point of view by our *confrère*, M. Clunet, in an opportune pamphlet entitled, "*Un Etranger peut il pratiquer une Saisie-Arrêt en France sur un Français?*" (Paris. 1882). M. Clunet's answer to the question which has recently been raised in the French Courts (*King* v. *Saige*, *Tillet*, *et al.*), is a closely reasoned affirmative. "Saisie-Arrêt," he argues, connotes a debt; now a debt has no nationality. And the very language of the Code of Civil Procedure, Arts. 557 and 558, which gives the power to all creditors (*à tout créancier*) appears to him universal and unlimited, not national and limited in its application. And the opposite view would, in M. Clunet's eyes, constitute an opposition between Law and Equity which he does not believe to have been intended. The entire Essay is well worthy of careful perusal as a study in Private International Law.

* * *

The Turin Meeting of the Institute of International Law seems likely to give rise to lively discussions in regard to the Reforms which its Continental Members desire in Maritime Law. We cannot say that we are surprised at the general result, because, so far as we have been able to study the matter and lay it before our readers, there is an absolute divergence between what may, broadly speaking, be called the Anglo-American and the Continental views on this question. So much must, we think, have been made

evident to our readers from the facts which we placed before them in an article on "The Law of Nations in Peace and in War," in our August number, where we attempted a brief analysis of some recent Anglo-American and Continental publications. We shall probably find it necessary to recur to some of the Treatises there mentioned, in order to show, when the facts of the Turin Meeting shall have been officially presented to the world, that its Resolutions were simply the natural result of a sharp division between two contending opinions. The opinion of the majority of Continental Jurists, irrespectively of Race and Politics, has for some time past been tending more and more to the assertion of what is called the establishment of the Sacredness of Private Property at Sea in time of War. We have more than once pointed out what appear to us to be some of the weak points in this contention. But, however open to animadversion from one point of view, it is a current in which opinion sets very strongly, and it is necessary to take it seriously into account. When the Jurists of France, Germany, Italy, and Russia, divided on so many other points, are at one on this question, it is high time for us to consider our own position, in view of the possible consequences of such an agreement if the Governments of their respective countries should prove to share the opinions of the Jurists. We shall certainly give our fullest attention to the Turin Meeting in a future number. In the meanwhile we are glad to be able to insert in our present issue some valuable notes of the meeting, from the pen of an eye-witness of the proceedings.

* * *

Since the Brazilian Règlement of the 27th July, 1878, already given in this Review (*Law Magazine and Review*, No. CCXLII., November, 1881), there has been fresh legislation on the subject of the execution of Foreign Judgments, of

which it may be convenient to lay the substance before our readers.

The Règlement of 1878, in conformity with the Law of 4th August, 1875, exacted Legislative (not Diplomatic) reciprocity as a condition precedent of the execution of a Foreign Judgment in Brazil.

By the Decree of 27th July, 1880, as reported in the *Annuaire de Législation Etrangère* (Paris : Cotillon. 1881), p. 734, it is provided that Foreign Judgments, delivered in countries with which there is no reciprocity, may be made executory within the Brazilian Empire by Government *Placet*, the granting of which is discretionary.

We learn from the interesting sketch of Brazilian Legislation, furnished to the *Annuaire* of 1881, as before, by Baron d'Ourém, that the Decree of 1880 owes its origin to a Foreign Judgment which was pronounced in favour of a Brazilian subject; but it is evident, adds the Baron, that aliens will also reap its benefits, and that the reciprocity required by the Law of 1875 is *de facto* abolished. Any Foreign Judgment may now be made executory, either in virtue of the Reciprocity rule, or by permission of the State : only, in accordance with the Decree of 1880, the formalities of the execution of the Judgment will continue to be governed by the Règlement of 1878.

A convention establishing partial reciprocity, viz., as to Judgments in causes relating to Wills and Inheritance, has been passed between the Brazilian Empire and the Kingdom of Italy, becoming law in the latter country by Royal Decree of 27th May, 1880 (*Annuaire*, 1881, p. 302).

* * *

Some time since, we called attention in this Review (*Law Magazine and Review*, No. CCXXX., November, 1878), to the unsatisfactory management of the Law Reports, and offered various suggestions for their improvement. Some

of these, we are glad to observe, have now been carried out: a report of *Williamson* v. *Barbour*, a digest of the subject matter of the *Weekly Notes*, a sale of the Reports by their Divisions, and a more speedy publication of the Indices, may be instanced. In the Reports themselves, however, there is still great room for improvement. In the last volume alone, *i.e.*, the eighth of the Queen's Bench Division, no less than sixteen pages have required reprinting in consequence of mistakes passed over on their first publication; and the same number of the Chancery Division contains on page 215 a passage of which it is so impossible to make sense that we are compelled to assume a remarkable absence of care on the part of those immediately responsible. The Errata, themselves sometimes imperfect, will furnish other instances of similar want of care. There is to be found, too, in the last Digest, a curious illustration of the scissors-and-paste system which perpetuates error instead of verifying references. At page 42 of the *third* volume of the Queen's Bench series there is reported a case *sub nomine Toler* v. *Slater*. In the Digest for the first four years this was referred to as being in the *second* volume of the series: the mistake was then copied into the ten years' Digest, and thence actually appears again in the Digest for the fifteen years.

Watchful supervision remains as before the great want of the system. We repeat our suggestion for an auxiliary working council of younger and practical men, and for the appointment of two or more sub-editors. The duties of the latter might, it is conceived, advantageously embrace frequent visits to the Courts to ascertain whether the appointed reporters were at their posts, and, if not, to learn the cause of their absence. The subscribers have a right to require that the well remunerated reporters for the standard Reports, should furnish their reports from their own notes and observation of each case, with the assistance, it may

be, of a counsel's brief; but independently of newspaper and other reporters, substitutes and deputies, borrowed notes, and other such labour-saving arrangements. Their work should be done as a duty, not as something dependent on their own convenience. The profits, moreover, should, it is submitted, be applied towards reducing the price of the Reports, or improving their character. A reserve fund of £15,000, of which no less than £8,000 is to be put by this year, seems quite out of proportion to the case of a society not associated for profit, and whose "prosperous results," to quote the somewhat complacent language of the last Annual Report, should be applied for the good of the subscribers whose property they are.

While glad to know that the Incorporated Council bears in mind our Canadian legal brethren, we cannot help expressing a certain amount of surprise at the fact, for a knowledge of which we are indebted to our Toronto contemporary, the *Canada Law Journal*, for June 1, that copies of the Digest of the Law Reports, 1866-80, are being delivered in the Dominion, "with extreme liberality, free of all expense." There can be no doubt that the epithet applied by our contemporary is well chosen. But some in this country may think that such liberality is rather too "extreme."

There is still current in the Profession, we have reason to believe, a wide-spread dissatisfaction with the management of the Law Reports. Some recently adopted practices, such as the initialling of each Report, and the introduction of a few typographical alterations, are, we hope, signs that the Council are alive to the necessity for improvements and for attention to details, but the Reports themselves are yet far short of that standard of excellence which we feel sure must be the goal of the Incorporated Council.

Legal Obituary of the Quarter.

(England, Scotland, and Ireland.)

Allen, Mundeford, Esq., Solicitor, aged 88. Eldest son of the late Brigade-Major Mundeford Allen. *Oct.* 19.

Anstie, George Washington, Esq., Solicitor, Devizes, aged 82. Mr. Anstie, who had some time since retired from practice, was admitted in 1822, and was under articles with Messrs. Swain at the same time as the late Lord Beaconsfield. *July* 17.

Baddeley, Thomas Bernard, Esq., Solicitor, Newport, Shropshire, aged 67. Admitted in 1838. *Sept* 1.

Bathurst, Henry, Esq., Solicitor, Faversham, aged 69. Admitted in 1853. *Oct.* 1.

Baxter, John Boyd, Esq., of Craig Tay, Dundee, LL.D., Procurator-Fiscal, Dundee, Honorary Sheriff-Substitute for Forfarshire, aged 87. Dr. Baxter, who was son of W. Baxter, Esq., merchant in Dundee, was, it is stated, at the time of his death, one of the oldest members of the Faculty of Procurators in Scotland, and had held the office of Procurator Fiscal for more than half a century. He was LL.D. of the University of St. Andrew's, and J.P. for Forfarshire. *Aug.* 4.

Bernard, Rt. Hon. Mountague, D.C.L., formerly Member of the Judicial Committee of the Privy Council, aged 61. Third son of Charles Bernard, Esq., of Eden, Jamaica, and educated at Sherborne School, Dr. Bernard became Scholar of Trinity College, Oxford (B.A., 1st Cl. *Lit. Hum.*, 2nd. Cl. Math., 1842), and was called to the Bar by the Hon. Society of Lincoln's Inn in 1846. In 1859 he was appointed to the newly-founded Chair of International Law and Diplomacy in the University of Oxford, which he held till 1874. In 1866 Dr. Bernard was appointed a member of the Royal Commission on Naturalisation, and in 1871 he was one of the High Commissioners for negotiating the Treaty of Washington. In consequence of his services in this last capacity he was on his return sworn of Her Majesty's Privy Council, and made a Member of the Judicial Committee. In 1871 he was also engaged, with Sir Roundell Palmer, on the Alabama Arbitration.

In 1873 he took part in the foundation of both the Institute of International Law, at Ghent, and the Association for the Reform and Codification of the Law of Nations, at Brussels. He was President of the Institute at its Oxford meeting, in 1880, and was a Vice-President of the Association. In 1877 he was a member of the Royal Commission on Fugitive Slaves, and was soon afterwards placed on the Universities Commission for his own University. He was author of an Historical Account of the Neutrality of Great Britain during the American Civil War, and published several of his Oxford Lectures in pamphlet form. *Sept.* 2.

BILLING, Richard Annesley, of the King's Inns, Esq., Barrister-at-Law, Q.C, Victoria, New South Wales, aged 67. Called to the Irish Bar in 1839, Mr. Billing went to Australia for his health in 1856, and was admitted to practice at the Victoria Bar, and was named Queen's Counsel for Victoria in 1878. He was for some years Law Lecturer at the University of Melbourne, and in April, 1881, was appointed a Judge of County Courts. *June* 21.

BROWNE, Rowland Jay, of Redwelly, Carmarthenshire, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 69. Mr. Browne, who was called to the Bar in 1845, was a member of the Northern Circuit. *Aug.* 7.

BUZZARD, George, Esq., Solicitor, Clerk to the Vestry, St. James's, Westminster, aged 79. Admitted in 1827. *Aug.* 12.

CANT, Thomas Gibson, Esq., Solicitor, Penrith, Clerk to the Lords Lieutenant of Cumberland and Westmoreland. Admitted in 1852. *Aug.* 7.

CLARKE, Thomas, M.A., of Knedlington Manor, Yorkshire, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 85. Mr. Clarke, who was of St. John's College, Cambridge (B.A., 14th Wrangler, 1820), was called to the Bar in 1824. He was only son of William Clarke, Esq., of Knedlington Manor, and was D.L. and J.P. for the East and West Ridings of Yorkshire. *Aug.* 17.

CUTTS, John, Esq., Solicitor, Little Bardfield Hall, Braintree, aged 85. Mr. Cutts, who was admitted in 1831, had been in practice for more than half a century. *July* 21.

DANIELL, Edmund James, Esq., Solicitor, late of Forest Gate, Essex, aged 68. Admitted in 1859. *Oct.* 4.

DAVIES, Robert Henry, Esq., Solicitor, aged 48. Admitted in 1867. *Oct.* 21.

DISMORE, Thomas George, Esq., Solicitor, Liverpool, aged 34. Mr. Dismore, who was admitted in 1871, perished through an accident on Snowdon. *Aug.* 20.

EDWARDS, Albert, Esq., Solicitor, Ottery St. Mary, aged 38. Admitted in 1863. *July* 19.

EVANS, Arthur, Esq., Solicitor, Maldon, aged 39. Admitted in 1871. *Aug.* 4.

FAIRFAX, Thomas Edward, of Greycrook, St. Boswell's, Roxburghshire, and of the Inner Temple, Esq., Barrister-at-Law, aged 50. Mr. Fairfax, who was called to the Bar in 1874, and was formerly in the Bengal Civil Service, was second son of the late Col. Sir Henry Fairfax, 1st Bart. (cr. 1836), by Archibald Montgomerie, third daughter of Thomas Williamson Ramsay, Esq., of Lixmount, Co. Edinburgh, and Maxton, Co. Roxburgh. The line of Fairfax represented by the present Sir William Ramsay Fairfax, of Maxton, claims descent from the stock of the Lords Fairfax of Cameron. *Oct.* 5.

FALCONER, Thomas, F.R.G.S., F.G.S., of Lincoln's Inn, Esq., Barrister-at-Law, late Judge of County Courts, South Wales, aged 76. Mr. Falconer, who was son of Rev. Thomas Falconer, M.A., late Fellow of C.C.C., Oxon., Bampton Lecturer in the University, was called to the Bar in 1830. From 1837 to 1840 he was Revising Barrister for Finsbury and Marylebone, &c. In 1850, he was appointed Arbitrator to adjust the Boundaries between Canada and New Brunswick, and in 1851, Colonial Secretary, Western Australia. Mr. Falconer was J.P. for the counties of Glamorgan, Monmouth, and Brecon, and was author of several works, on the "Oregon Question," "Probate Courts," &c. *Aug.* 28.

FAWCETT, Henry, of the Middle Temple, Esq., Barrister-at-Law, aged 47. Called 1862. *Aug.* 24.

FISHER, Francis, Esq., formerly Crown Solicitor, Sydney, New South Wales, aged 37. *Aug.* 15.

FITZGIBBON, Gerald, Esq., Q.C. (Irel.), 1841, a Bencher of the King's Inns since 1858; a Serjeant-at-Law, 1859; and formerly a Master in Chancery (Irel.), aged 90. Called to the Irish Bar in 1830, "Master Fitzgibbon," says the *Irish Times*, "had his place among the foremost of the patriarchs of the Law in Ireland. His life covered a vast interval of Irish life and struggle. From 1793 to 1882 was a period crowded beyond all historic precedent with events of enormous consequence and interest for a keen and earnest Irish sharer in the toil and trouble of the generations

that came and went during that long stretch of years." Master Fitzgibbon resigned his office in 1878, but continued, says the *Irish Law Times*, to take a keen and active interest in public affairs. *Sept.* 27.

GARRETT, Richard Eydon, Esq., Solicitor, formerly of Hull. Mr. Garrett was drowned in the Unsumduzi River, near Pietermaritzburg. *Aug.*

GOATER, Thomas, Esq., Solicitor, Southampton, aged 61. Admitted in 1845. *July* 27.

GOODMAN, John Reynolds, of Lincoln's Inn, Esq., Barrister-at-Law, aged 72. Called in 1841. *Oct.* 6.

GREY, Right Hon. Sir George, of Fallodon, Northumberland, Bart., G.C.B., formerly Secretary of State for the Home Department, Judge Advocate-General, &c., aged 82. Sir George, who was son of Hon. Sir George Grey, 1st Bart. (cr. 1814), and grandson of Charles, 1st Earl Grey (cr. 1806), was of Oriel College, Oxford (B.A., 1st cl. *Lit. Hum.*, 1821, M.A., 1824), and was called to the Bar by the Hon. Society of Lincoln's Inn in 1826. In 1832 he entered Parliament as M.P. (Liberal) for Devonport, and in 1834 became Under-Secretary of State for the Colonies, and, for a short time, Judge Advocate General. In 1846, on the return to power of Lord John Russell, Sir George was appointed Home Secretary, a post with which his name subsequently became practically identified, only retiring from it finally in 1866. In 1847 Sir George was elected for North Northumberland, but in 1848 he became M.P. for Morpeth, which seat he retained till 1874. In 1854 he was Secretary of State for the Colonies; in 1855 Home Secretary, under Lord Palmerston; and in 1857 Chancellor of the Duchy of Lancaster, being again Home Secretary, 1861-6. Sir George was D.L. and J.P. for North Northumberland. *Sept.* 9.

GRIMSHAW, John, Esq., Solicitor, Gorton, Manchester, aged 49. Admitted in 1857. *Oct.* 22.

GRUNDY, Edmund Atkinson, Esq., Solicitor, Registrar of the County Court, Bury, Lancashire. Admitted in 1860. *Aug.* 21.

HALDANE, Alexander, of Gleneagles, and of the Inner Temple, Esq., Barrister-at-Law, aged 81. Mr. Haldane, who was J.P. for Essex, was called to the Bar in 1826, and was eldest son of James Alexander Haldane, Esq., heir male of the Haldanes of Gleneagles. *July* 19.

Hubbersty, Philip, Esq., Solicitor, Wirksworth, Derbyshire, aged 77. Admitted in 1828. *Oct.* 17.

Kavanagh, Morgan Butler, of the King's Inns, Esq., Barrister-at-Law, aged 37. Mr. Kavanagh, who was called to the Irish Bar in 1867, was only son of the late Morgan Kavanagh, Esq., of Red Acres, Co. Kilkenny. *Oct.* 8.

Kenney, Charles Lamb, of the Inner Temple, Esq., Barrister-at-Law. Called to the Bar in 1856. *Aug.* 25.

Kerns, Joseph, Esq., Solicitor (Irel.), Rathgar. Admitted in 1862. *Aug.* 24.

Latimer, John, Esq., Solicitor, Leeds, aged 53. Mr. Latimer, who was eldest son of David Latimer, Esq., of Kirklington Hall and [illegible] Heads, Cumberland, was admitted in 1855. *July* 18.

Lewis, Charles Carne, Esq., Solicitor, Coroner for Southern Division of Essex, aged 75. Mr. Lewis, who was son of the Rev. John Lewis, Rector of Ingatestone, was admitted in 1828, and received his appointment as Coroner in 1833. *July* 26.

Lougheed, Henry M., Esq., Solicitor (Irel.), Portarlington. Admitted in 1846. *Oct.* 14.

Mackenzie, Colin, Esq., W. S. (Scot.), Deputy Keeper of the Great Seal for Scotland, aged 41. Mr. Mackenzie, who was of the University of Edinburgh, was admitted a Writer to the Signet in 1864. He was J.P. for Edinburgh, and had represented Fortrose in the Annual Convention of Scottish Burghs. Mr. Mackenzie was eldest son of the late James Hay Mackenzie, Esq., W.S., and grandson of Colin Mackenzie, Esq., of Portmore, descended of the Mackenzies of Gairloch. *July* 15.

Martley, John, B.A., of the King's Inns, Esq., Barrister-at-Law, aged 38. Called to the Irish Bar in 1875. B.A., Trin. Coll., Dublin. *Aug.* 25.

McCarthy, Alexander, Esq., Solicitor (Irel.), Midleton, Co. Cork, aged 80. *Oct.* 16.

McKenna, Peter John, of the King's Inns, Esq., Barrister-at-Law. Mr. McKenna, who was called to the Irish Bar in 1850, was Counsel to the Board of Inland Revenue and Customs. *Sept.* 28.

Mylne, John Eltham, M.A., B.C.L., of Lincoln's Inn, Esq., Barrister-at-Law, aged 38. Mr. Mylne, who was of Corpus Christi College, Oxford (2nd. Cl. Moderations, 1865, B.A., 1867,

2nd. Cl. Jurisprudence and Modern History), was called to the Bar in 1869. *Sept.* 8.

PALMER, Charles John, Esq., D.L., F.S.A., Solicitor, Great Yarmouth, aged 76. Mr. Palmer, who was admitted in 1827, and was a Deputy-Lieutenant for Norfolk, was only son of John Danby Palmer, Esq., of Great Yarmouth, and gained considerable reputation in Antiquarian Literature as the author of a work on the Antiquities of Yarmouth. *Sept.* 24.

PALMER, Isaac, Esq., Solicitor (Irel.), Dublin. Admitted in 1834. *July* 21.

PERRY, George, of the King's Inns, Esq., Barrister-at-Law, aged 38. Mr. Perry, who was called to the Irish Bar in 1865, was the eldest son of the late Jeremiah Perry, Esq., Solicitor. The *Irish Law Times* pays a high tribute to Mr. Perry's abilities and popularity, and says that he had rapidly attained a very distinguished position. *Aug.* 29.

PHILLIPS, William, Esq., Solicitor, Clerk to the Justices of the Borough, Plymouth, aged 44. Admitted in 1860. *Oct.* 16.

POWELL, James, Esq., Solicitor, Pocklington, aged 50. Admitted in 1856. *Sept.* 15.

ROWAN, William T., Esq., Solicitor (Irel.), Derry. Admitted in 1875. *Aug.* 11.

SCANNELL, Thomas Joseph, Esq., Solicitor (Irel.), Cork, aged 50. Mr. Scannell, who was admitted in 1848, was son of the late Joseph Scannell, Esq., of the King's Inns, Barrister-at-Law. *Sept.* 29.

SEDGWICK, John, Esq., Solicitor, Watford, aged 70. Admitted in 1834. *Oct.* 23.

SHAROOD, Charles James, Esq., Solicitor, aged 46. Mr. Sharood, who was son of Charles Sharood, Esq., Solicitor, of Hurstpierpoint and Brighton, was admitted in 1862, and was in the Solicitor's Department, General Post Office. *Aug.* 7.

SMALE, Sir John, Kt., late Chief Justice of Hong Kong, aged 77. Sir John Smale, who was son of the late John Smale, Esq., was in the first instance admitted a Solicitor, subsequently practised under the Bar as an Equity Draftsman, and was called to the Bar of the Inner Temple in 1842. He was one of the editors of the series of Reports known as De Gex and Smale, 1846-52, and Smale and Giffard, 1852-6. In 1860 he was appointed Attorney-General for Hong Kong, and became Chief Justice in 1866, which office he had only recently resigned. He was knighted in 1874. Sir John Smale took great interest in

the work of Law Amendment, and had lately been elected a member of the Standing Committee on Jurisprudence of the Social Science Association, where he gave the opening address of the Winter Session, 1881-2. *Aug.* 13.

SMITH, Edward Thomas, Esq., B.A., District Judge, Jamaica, and of Lincoln's Inn, Barrister-at-Law, aged 46. Mr. Smith, who was of Brazenose College, Oxford (B.A., 1858), was called to the Bar in 1862. He was appointed Stipendiary Magistrate at the Falkland Islands in 1873, and in 1876 was transferred to British Guiana. In 1881 he was promoted to the Judicial office in Jamaica, which he filled at the time of his death, a few days after sailing for Europe in the R.M.S. *Don.* *Sept.* 26.

SMITH, ROBERT Arthur Baker, Esq., Solicitor, aged 29, the only son of Rev. Robert Smith, Vicar of Tintwhistle, Cheshire. *Oct.* 21.

STEPHEN, Lessel, Esq., Advocate in Aberdeen, aged 52. Mr. Stephen, who was admitted a member of the Society of Advocates in Aberdeen in 1856, was for some years Secretary to the Aberdeenshire Liberal Association, and was frequently employed as a Parliamentary Agent. *Aug.* 1.

STUART, William James, Esq., Solicitor (Irel.), Dalkey. Mr. Stuart, who was admitted in 1853, was youngest surviving son of the late Rev. David Stuart, D.D. *Oct.* 7.

TANDY, Charles Henry, Esq., M.A., Q.C. (Irel.), aged 62. Mr. Tandy, who was son of an eminent Solicitor in Waterford, passed a distinguished career at Trinity College, Dublin, where he graduated B.A. as Silver Medallist in Classics, 1845, but only took his M.A. in 1874. He was called to the Irish Bar in 1849, and became a member of the Leinster Circuit. He held the office of Crown Prosecutor for Co. Tipperary, and was Standing Counsel to the University of Dublin. He was made Q.C. in 1866, and was Professor of Constitutional, Criminal, and Crown Law to the King's Inns. *Aug.* 17.

THOMPSON, Richard Phillips, Esq., Solicitor, Stamford, aged 38. Admitted in 1869. *Aug.* 1.

TOWNSEND, Joseph H., Esq., Solicitor (Irel.), late of Killiney, Co. Dublin. Admitted in 1843. *Sept.* 18.

TRENCH, Hon. Charles James, aged 76. Mr. Trench, who was second son of Francis Trench, Esq., of Sopwell Hall, brother of the 1st Lord Ashtown (cr. 1800), and obtained in 1840 a patent of precedence as a Baron's son (his brother having succeeded as 2nd Lord), was called to the Irish Bar in 1830.

He was for some time a Judge of County Courts, and Chairman of Quarter Sessions, Co. Dublin. *Aug*. 31.

TURNER, Richard Edward, Esq., Bencher of the Inner Temple, aged 70. Mr. Turner, who was of Trinity College, Cambridge (B.A., 1836, 1st Cl. Classical Tripos, and Senior Optime), practised for a considerable time under the Bar, as a Special Pleader. He was called to the Bar of the Inner Temple in 1853, became Revising Barrister for Kent, and was on the Commission to enquire into Corrupt Practices after the last General Election. Mr. Turner had but recently been elected a Master of the Bench of his Inn. *Oct*. 26.

WEBSTER, George, of Invercreran, Argyleshire, Esq., W.S. (Scot.), Sheriff Clerk of Forfarshire, aged 82. Mr. Webster, who was son of Rev. John Webster, of Inverarity, Forfarshire, was educated at the University of St. Andrew's, and was admitted W.S. in 1821. In 1854 he was appointed Sheriff Clerk, and in 1856 Commissary Clerk for Forfarshire, and was J.P. for Forfarshire and Argyleshire. *Aug*. 19.

WEDDERBURN, Sir David, of Blackness and Ballindean, Bart., Advocate at the Scottish Bar, aged 46. Sir David, who was called by the Faculty of Advocates in 1861, was of Trinity College, Cambridge (B.A., 2nd Cl. Natural Science Tripos, 1858). He was M.P. (Liberal) for South Ayrshire, 1868-74, and subsequently for the Haddington Burghs, his seat for which he had but very lately resigned. Sir David was J.P. for Midlothian, and Capt., 3rd Battalion Royal Gloucestershire Regiment. He succeeded his father, Sir John, as 3rd Bart., U.K. (cr. 1803), and *de jure*, 9th of the original Scottish baronetcy of Wedderburn of Blackness, created, 1704, in the person of Sir John Wedderburn, also an Advocate at the Scottish Bar. The Scottish baronetcy was forfeited by Sir John, 5th Bart., 1746. *Sept*. 18.

WILSON, James McDowell, Esq., Barrister-at-Law, aged 63. *Sept*. 18.

WILLIAMSON, Charles, Esq., Solicitor (Irel.), Dublin, aged 62. Admitted in 1844. *July* 21.

WILLINS, William Preston, Esq., Solicitor, Romford, aged 35. Admitted in 1869. *Aug*. 19.

Reviews of New Books.

Histoire du Droit, et des Institutions Politiques, Civiles, et Judiciaires de l'Angleterre, comparés au Droit et aux Institutions de la France, depuis leur origine jusqu'à nos jours. Par ERNEST GLASSON, Membre de l'Institut, Professeur à la Faculté de Droit et à l'Ecole des Sciences Politiques. In progress. Vols. I.—III. (Paris: G. Pedone Lauriel. 1882.)

Les Institutions et la Législation des Gaulois. Par JOSEPH LEFORT, Lauréat de l'Institut, Correspondant de l'Académie de Législation de Toulouse. (Paris: E. Thorin. 1881.)

The scientific study of Early Institutions has of late years received a far wider and deeper cultivation than it had among us in the days of Kemble, Palgrave, and Allen, or among our neighbours across the Channel in the days of Montesquieu and Mably.

Of the progress which this study is making in France, we have before us ample evidence in the works which we shall briefly bring to the notice of our readers. And it must be borne in mind that they are only samples which happen to have reached us, not by any means representing more than a part of the activity of the French Press in the matter of Constitutional Law and the History of Institutions. Our valued contemporaries, the *Revue Générale du Droit*, and the *Nouvelle Revue Historique de Droit Français et Etranger*, constantly bear witness to this activity, alike in substantive articles and in reviews.

We have placed M. Lefort's Tractate side by side with the very elaborate work of M. Glasson, not only on account of its subject-matter, but also because it appears to us to fill, at least in part, a *lacuna* in the larger book in regard to Celtic Law. Of that branch of the study of Early Institutions, M. Glasson seems to make too small account. He dismisses it, so far as his first three volumes are concerned, in the compass of a brief notice in the third volume, and it is difficult to suppose that he will return to it in any of his forthcoming issues. This *lacuna* is to our mind the more regrettable from the high estimate which his treatment of Anglo-Saxon, Anglo-Norman, and Mediæval French Law

leads us to form of M. Glasson's ability as a worker in the field of Comparative Jurisprudence. We cannot but think that M. Glasson would probably have decided on enlarging this part of his subject if he had seen in time the recent contribution of Mr. Maitland in this *Review*, on the Blood-Feud and the Kin (*Law Magazine and Review*, No. CCXLI., for August, 1881). In a future edition we trust that the Celtic division of M. Glasson's work will be enlarged, as Mr. Maitland and M. Lefort both, to our mind, independently show cause for its enlargement. There is much yet to be done in this somewhat special field, and M. Glasson would do an additional good service by bringing together in his pages the results of research by living writers, as well as those of old.

Passing from the special to the general, we may remark that M. Glasson embraces within his scope a broad view alike of the coincident and of the separate development of Constitutional Law in England and in France. There were times when the two were very closely akin. But in the end they separated, and have never since converged, though each may now and then be said to have taken something from the other, and it may be that this process of "give and take" is not yet at an end.

It is quite certain that as a matter of fact, apart from any earlier coincidences, the Jury, as an Institution, has been copied from England by France and other continental countries. But, rightly enough, the Institution has been more or less moulded differently in the several Continental States which have adopted it, and there may sometimes, to an English mind, seem to be little more than the name in common. Some analogies, or at least apparent analogies, between England and the Continent, await further investigation. It has been, for instance, an obvious thing to point out that the "Comitat" of Hungary bears, or seems to bear, an analogy to the English county. This fact was pointed out some years ago, in a Paper in the *Journal of the British Archæological Association* (Vol. XXVIII., pp. 241-4), by the late Mr. Augustus Goldsmid, on "Hungarian Political Institutions considered in relation to our own." The truth is that slight as the links between apparently related Institutions may, in a given case, prove to be, the whole field is a very wide one, and M. Glasson may be congratulated on the amount which he has been able to cover. It was not possible for him, before the publication of the relative portions of his work to compare

his own views with those which have so recently found expression in Mr. Green's *Making of England* (London: Macmillan, 1881); but we shall hope to see this in a future Edition. And with this view we may remind M. Glasson that he would find valuable materials bearing on the inter-penetrating Laws of Church and State in Celtic and Anglo-Saxon times in Haddan and Stubbs's *Councils and Ecclesiastical Documents* (Oxford: Clarendon Press), a work which he does not appear to have used, perhaps owing to its seemingly special destination. We shall look forward with interest to the coming volumes, in which M. Glasson promises to devote himself still more thoroughly to the exposition of English Constitutional Law and History.

Since the above was in type, we have received the fourth volume, dealing with the period Edw. III.-Hen. VIII. From the rapid glance which is all that time admitted, we think that M. Glasson's book is growing in interest with the growth of the Institutions whose history he has chosen for his theme.

The Reporters Arranged and Characterized. By JOHN WILLIAM WALLACE. Fourth Edition, revised and enlarged, by FRANKLIN FISKE HEARD. Carswell and Co., Edinburgh and Toronto. 1882.

This is not only a useful work, but also one full of interest both to the Legal Profession and to the student of History. For the Reports are in themselves part of our history, and they eminently deserve the careful treatment which they have received at the hands of Mr. Wallace and Mr. Heard. That such a book, written and edited by members of the American Bar, should be published in Great Britain and Canada, gives it an International character, and is, moreover, a testimony to the practical community of interest in the history of English law on both sides of the Atlantic. It is pleasant to ourselves to recall the contributions to our own pages by the Editor of *Wallace's Reporters* and no less is it pleasant to note the frequent citation of the various series of this *Review* which are scattered broadcast through Mr. Wallace's book. Our attitude as to the Reports and the necessity for a fresh departure is appositely noted by Mr. Wallace at the close of his "Preliminary Remarks." We are still advocating the utmost that can be done to make the Law Reports in every respect the worthy successors of what

Chancellor Kent called "true portraits of the talents and learning of the sages of the Law."

Our own Publishers have done much to bring those famous "portraits" before modern readers in a life-like presentment, and Mr. Wallace frequently alludes to these reproductions, half regretting his Bellewe, the *raritas raritatum* of Law Libraries, most precious to find in a remote corner; half pleased to see his old and trusted friends thus given a new lease of life.

The hereditary interest in the Reports which exists on both sides of the Atlantic is well pointed out by Mr. Wallace, who traces the English legal connections of the ancestors of George Washington, viz., Joseph Washington, Esq., of Gray's Inn, and Sir Lawrence Washington, Chief Register in Chancery. And on the English side he tells a long bead-roll of names in the Peerage of the United Kingdom, the living representatives of Coke, Littleton, Hobart, Anderson and others, and urges upon them their duty to care for the accurate publication of the words of those who made their name and their fame as the Reporters, the Beacon Lights of their day, guiding men through the mazes of the Courts of Law. We trust that Mr. Wallace may live to see more done towards the collection and embodiment of these faithful records of "those little competitions, factions and debates of mankind that fill up the principal drama of Human Life."

The Principles of the Law of Real Property. By the late JOSHUA WILLIAMS, of Lincoln's Inn, one of her Majesty's Counsel. Fourteenth Edition, incorporating the Conveyancing and Law of Property Act, 1881, by T. CYPRIAN WILLIAMS, Esq., of Lincoln's Inn, Barrister-at-Law. Henry Sweet; C. F. Maxwell. London and Melbourne. 1882.

In chronicling the publication of such a "*monumentum ære perennius*" as the fourteenth edition of Williams's Real Property, brought out by the author's son, we have little to do beyond expressing the pleasure with which we welcome so fitting a continuation of the *persona* of Joshua Williams.

The editor has done his work well, under a naturally strong conviction of the difficulty of doing it at all. He has only as yet made one substantive addition to his father's work, in the shape of the chapter dealing with Conveyances under the new

Act, but as new legislation comes on the scene, and fresh matter is called for, we trust that Mr. Cyprian Williams will not shrink from the responsibility of coming forward in his own person and giving the student of Real Property Law the advantage of the criticisms or explanations which may be required. In the chapter which he has added a typical Conveyance is given, both under the old and new systems, and the student is warned against supposing that the new Conveyance, though unquestionably much shorter, and apparently more simple, really does produce the effect of increasing the accuracy with which the rights and obligations of the parties can be determined. It is evident that the caution which was so marked a feature in Mr. Joshua Williams's books will not be absent from the additions which may from time to time be made to them by his son. The last chapter from the pen of the original author, that on Title, presents these characteristics in relation to a subject of great importance, and for which legislation will sooner or later no doubt be imperatively demanded. Several of the questions to which Mr. Joshua Williams had given much thought, and upon which he has in different places expressed his opinion with his usual moderation, found a place among the Agenda of the Social Science Association at the recent Nottingham Meeting. So various are the points of view from which they may be considered that it is very desirable that such questions as the Registration of Titles, the assimilation of the Law as to Real and Personal Property, &c., should be fully and repeatedly discussed. It is no small advantage that the estimate taken of them by so ripe a judgment as that of Joshua Williams should be readily accessible in so widely known a book as the *Principles of the Law of Real Property*. In a future issue, Mr. Cyprian Williams might refer his readers to the experience on some of these points which may be obtained from our Colonies and from the United States. In New York, for instance, a reform of the existing system as to Registration of Titles has been proposed on the basis of the New Zealand Land Transfer Act, 1870, and the two systems are contrasted in a very interesting manner in a lecture on *Transfer of Title to Real Estate*, by Dwight Olmstead, President of the West Side Association (New York. 1881).

A Digest of all the Cases relating to India decided by the Privy Council and the other Courts in England. By REGINALD M. A.

BRANSON, of the Middle Temple, Barrister-at-Law. Bombay: Education Society's Press, Byculla. 1881.

Mr. Branson's work is at once comprehensive and well executed. It is also, to a far greater extent than might be supposed possible in a Digest, an extremely interesting book for all students of that complicated network of Law and Custom which we are obliged, for want of a better name, to group together under the general title of Indian Law. How very divergent are the Religious and Civil Customs to which Judicial sanction has been given or refused in the vast area of our Indian Empire, a cursory glance at any collection of Indian cases would suffice to show. Yet it is not by any means every instructive case which comes before the Privy Council. If Mr. Branson were to extend his valuable labours to the cases decided in the several Indian High Courts, and not appealed, there would be found a still richer mine of information on this very intricate subject. Thus we miss from Mr. Branson's pages the Malabar Cases noted in the *Indian Jurist Digest*, though it may be hoped, for the sake of science, that there may be some appeals from this quarter ready for insertion in his next edition.

Many of the Cases in Mr. Branson's Digest are of singular interest and value, and the Decisions are given so fully, when their importance seemed to demand it, that those who consult this volume will be able to get a very clear grasp alike of the points involved, and of the *ratio decidendi*.

Some of the more modern cases are among the most remarkable, as *e.g.*, *Skinner* v. *Orde* (pp. 343-4). Usually, of course, Hindu and Mohammedan Law are the personal laws of the followers of Brahma and Mohammed. But in recent times strange exceptions have arisen to this general rule, and the Privy Council has had to consider the singular state of things involved in the profession of Mohammedanism by baptised persons, who subsequently contracted, or professed to have contracted, a Mohammedan marriage. We do not think that a similar case has yet presented itself in Hindu Law.

The complications which are capable of arising under a conversion from Hinduism to Mohammedanism are well illustrated in *Jowala Buksh* v. *Dharum Sing* (pp. 545-7), in which case it strikes us as at least possible that the outward conversion may have been effected somewhat on the principle of that of the Albanian and Bosnian Begs, many of whom appear to have

conformed to Mohammedanism simply in order to retain their lands and local influence, but who long continued (if they do not still continue), the use of Christian names, and the *cultus* of Christian saints. The 'inexorable exigencies' of space alone prevent our discussing some of the many other interesting points in Mr. Branson's valuable Digest.

A Concise Treatise on the Law of Bills of Sale, embracing the Acts of 1878 *and* 1882, *with Appendices of Forms, Statutes, &c.* By JOHN INDERMAUR, Solicitor. Stevens and Haynes. 1882.

Mr. Indermaur has seized the opportunity afforded by the new Act to put together a handy book for the lay as well as for the legal public. In the brief compass of this present treatise we find the author discussing with his usual clearness the principal points which have as yet seemed to demand consideration in regard to the Bills of Sales Act, 1882. The language of the statute, it need scarcely be said, is not free from doubt, and the bearing upon its operation of earlier legislation still in force has the ordinary tendency to complicate matters. Mr. Indermaur cites the dictum of Fry, J., in *Edridge* v. *Hawkes*, as of considerable importance to a clear apprehension of the position. If the 5 Ric. II., st. 1, c. 8, carries all that the learned judge made it carry, Mr. Indermaur submits that there is great probability of the result being, practically, extortion under cover of the law, and he gives a recent instance within his own knowledge. Mr. Indermaur's new manual deserves to become a favourite source of reference on a subject of wide interest.

A Manual for the Congress of the Social Science Association. (Twenty-fifth Anniversary. Nottingham Meeting.) With a Narrative of Past Labours and Results. By J. L. CLIFFORD-SMITH, Secretary. (Offices of the Association, 1, Adam Street, Adelphi. 1882.)

In this very compact little volume the present Secretary has written a story of more than passing interest, and has, we think, given a very good reply to those who so frequently ask, what the Social Science Association has done. Since the days, now a quarter of a century ago, when Mr. G. W. Hastings, the President of the recent Nottingham Meeting was appointed the first General Secretary of the then newly-formed Association,

with Lord Brougham for President, it has laboured much and earnestly in many fields, where its influence may be traced, often unexpectedly to the present generation, by means of the clue which Mr. Clifford-Smith supplies. Its work in prison reform, and the subjects connected with the always well supported Repression of Crime Section, is almost perhaps the best known of all that it has undertaken. But it has carried, or helped to carry, many a reform in Municipal Law; in International Law it has been the *causa causans* of Mr. Dudley Field's *Outline International Code*, and it has but very recently dealt with the widely interesting and important questions alike in Municipal and International Law connected with Copyright and Marriage. We strongly recommend Mr. Clifford-Smith's *Manual* to all who wish to understand for themselves what are the Social Science Association's titles to honour.

Chapters on the Law Relating to the Colonies, with a Topical Index of Cases decided on Appeal by the Privy Council. By CHARLES JAMES TARRING, of the Inner Temple, Esq., Barrister-at-Law. Stevens and Haynes. 1882.

Under an unpretending title, Mr. Tarring has brought together a considerable amount of useful detail concerning the Law which governs our Colonies in their relations with the Mother Country, and as regards their own several administrations.

He discusses briefly the various forms of Colonial Administration, and gives tabular lists of the several groups or categories under which the Colonies may be ranged, and he goes at some length into the position and the powers of the Governor. This part of his subject brings us into contact with the celebrated cases of Governor Wall and Governor Eyre, and the less well known case of General Picton. It may seem to many of us somewhat remarkable that "fiery Picton," who was accounted in his day a sort of flower of chivalry, should be enshrined in the State Trials as the employer of torture upon a woman. It is true she was only a mulatto woman—or, as Mr. Tarring calls her, a "mulatta." It is even still more remarkable that no final decision had been reached when General Picton fell on the field of battle. It may, therefore, perhaps, still be open to contention that torture can be

administered in Trinidad under the Spanish Law in force at the time of our conquest of the island.

A Treatise on the Law of Costs in the Chancery Division of the High Court of Justice. Being the Second Edition of Morgan and Davey's *Costs in Chancery*, with an Appendix containing Forms and Precedents of Bills of Costs. By Right Hon. GEORGE OSBORNE MORGAN, Q.C., M.P., Her Majesty's Judge Advocate-General, and EDWARD ALBERT WURTZBURG, of Lincoln's Inn, Barrister-at-Law. Stevens and Sons. 1882.

Tempora mutantur, is a saying which naturally recurs to mind when we take a survey of this New Edition, which is necessarily almost entirely a new book. In part, the editors have changed also. But it needs little scrutiny of the very elaborate Treatise before us to show that such change as time has brought in the Editorial department has been only an outward change, the spirit remaining the same in regard to the careful treatment of the subject in hand.

An Appendix of upwards of four hundred pages, embracing the Forms and Precedents recited on the title-page, constitutes a labour in itself not to be despised, yet it is but a part of what has been spent upon this new Recension.

And even with all this zeal and energy on the part of the Editors, Legislation steps in, almost, we might say, steals in, and renders some of the new text a little old fashioned.

Lord Cairns's Married Women's Property Bill had not become law when Mr. Osborne Morgan and Mr. Wurtzburg placed, as they thought, the finishing touches to their work in July last. Scarcely a month elapsed before some of their language, as it appears to us, stood in need of being amended. On p. 361 the learned Editors tell us, with perfect justice as matters *then* stood, that "it is not easy to say what is the precise liability of a married woman in respect of costs." In their next edition they will surely alter this statement, and bring it into accordance with the modern Legislation. We should conceive that under the new system, the liability of a married woman in respect of costs will, to the extent of her separate estate, be open to no doubt. In saying this, of course, we are simply pointing out how difficult our very fragmentary, and sometimes almost, as it were, mole-like method of legislation renders the work of the author of a book on almost any branch

of English Law. The Judge Advocate-General and his colleague have done what in them lay, and have done it in the thorough manner which was to be expected of them. They are not to blame if Parliament suddenly steps in, and a sort of game of "Vice Versâ" is played, with an all too rapid shuffling of parts. It is not easy to reconcile oneself all at once to such changes, but however the world has altered since July, we are glad to thank Mr. Osborne Morgan and Mr. Wurtzburg for their excellent re-casting of so standard a book as Morgan and Davey's *Costs.*

The Institutes of Gaius and Justinian, the Twelve Tables, and the CXIIth and the CXXVIIth Novels, with an Introduction and Translation. By T. LAMBERT MEARS, M.A., LL.D. (London), of the Middle Temple, Barrister-at-Law. Stevens and Sons. 1882.

Dr. Mears, whose previous work, the *Analysis of Ortolan's Roman Law*, we noticed with the commendation which it seemed to us to deserve, has now brought out a companion volume which cannot fail to be of direct practical utility to the student of Roman Law.

While, for our own part, we should incline to view his reproduction and translation of the surviving fragments of the Twelve Tables as one of the most valuable features of his present book, we suppose it will be chiefly sought for its presentation, in the compass of one handy volume, of the Institutional Treatises both of Gaius and Justinian. But we greatly commend the introduction of the 112th and 127th *Novellæ* in their Greek and Latin texts. The Latin text, first known through the *Epitome Juliani*, is of Justinian's own date, but it ought undoubtedly to be compared with the Greek. The ordinary student, we are convinced, knows little, and we fear cares less, of the history of Roman Law in the Eastern Division of the Empire. That history, imperfectly as we yet know it, is clearly full of interest, showing as it does how the Roman Law met the more or less settled Legal systems of the varied races with which it came into contact on its Eastern frontiers; how far it absorbed some of their ingredients; and how far and where it has survived, living as it were a subterranean existence, unto the present day.

With regard to the Twelve Tables, the historical importance of which is rightly set forth by Dr. Mears, we have ourselves so lately experienced the difficulty of getting ready access to

the text, that we gladly welcome the renewed publication of so interesting a monument of Archaic Jurisprudence. On the points which Dr. Mears raises with regard to the translation of certain terms of constant recurrence in Gaius and Justinian, we have before now expressed a view substantially identical with his own as given in a note to p. xxxi. of his Introduction. There is unquestionably a special difficulty attaching to the translation of Law terms at any time, and this difficulty is greatly enhanced when it is sought to render terms of Roman Law by an English equivalent. Professor Muirhead's method, as we remarked when noticing his valuable edition of Gaius, does not by any means solve the problem, though his position as a Scottish Jurist gave him certain advantages of which he carefully availed himself.* Writing for the student, rather than for the critical scholar, Dr. Mears has refrained from reproducing Ortolan's long and frequent excursuses on points of textual or theoretical criticism. But he has succeeded in producing a concise and practical *vade mecum* for the student of Roman Law at the Universities and Inns of Court.

Quarter Sessions Practice. A Vade Mecum of General Practice in Appellate and Civil Cases at Quarter Sessions. By FREDERICK JAMES SMITH, of the Middle Temple, Esq., Barrister-at-Law, Recorder of Margate. Stevens and Haynes. 1882.

The Courts of Quarter Sessions have a wide jurisdiction; they have a large original jurisdiction in civil matters, as the governing bodies of the counties, in such matters as highways, county bridges, county finance, and the like. They have also an extensive jurisdiction as courts of oyer and terminer in criminal cases; and are important courts of appeal in criminal and quasi-criminal matters, on summary convictions and orders by justices in petty sessions. The question of county government has been much mooted of late, and we may be on the eve of a considerable constitutional change in the method of governing the counties. Mr. F. J. Smith, the Recorder of Margate, has, nevertheless, brought out a useful work on Quarter Sessions practice, intended as a *vade mecum* of general practice in appellate and civil cases at quarter sessions. The learned Recorder excludes, or only incidentally refers to the criminal jurisdiction exercised by them as courts of oyer and

terminer. He does not, however, restrict himself to the practice or method of procedure in matters brought before the court, but treats of much of the substantive law involved. In order to render his book a true *vade mecum*, or friend in need, he arranges its contents in alphabetical order; thus "Admiralty" heads the list of appellate subjects, and "Wreck" closes it. The book is divided into two parts: The first contains a rapid survey of the constitution of the Court of Quarter Sessions; its general jurisdiction; its members, viz., the Justices, the Recorder and his court (naturally dwelt on comparatively at length), and the clerk of the peace, the convening of the sessions, the preliminary proceedings, and the adjournment. Part II. contains the list of appellate subjects. We have looked through this list very carefully, and we do not think any subject has been omitted that ought to have been discussed; indeed, it might be possible to say that there are almost too many: thus, we find "Dynamite" as an "appellate subject;" but on reference we learn that its presence is due to the fact that anyone who has been summarily convicted of using dynamite to destroy fish may appeal on imprisonment to Quarter Sessions. Mr. Smith's work is characterized by thoroughness and honesty: it is convenient in size, but, being well digested, contains much information which many a book of more pretentious dimensions often lacks. Some few shortcomings should be amended in future editions. Several of the most recent decisions on the subject discussed are not given; references to *all* contemporary reports are not given in every instance, though in most cases they are; some of the references given are inaccurate, and others impossible, though for these the printer and not the author is probably to blame. Again, the decided cases follow in the body of the text the propositions they are cited to support: this we hold to be a mistake; their proper place is in footnotes, elsewhere they offend the eye, and often disturb the continuity of the sense. These blemishes, however, can easily be removed; Mr. Smith's book will, we are sure, be found to afford much assistance both to the magistrates forming the Court, and to those who practise before them.

The Statutes of Practical Utility, Vol. I., Pt. ii. (45 & 46 Vict.). Edited by JOHN LELY, of the Inner Temple, Barrister-at-Law. H. Sweet, Stevens and Sons. 1882.

This new part will be found fully to bear out the promise with which the undertaking started. Mr. Lely annotates briefly but much to the point, tracing back the new Legislation through its links with previous Acts or Bills, and either suggesting the places where Judicial interpretation is likely soonest to be in demand, or tersely describing the general characteristics of the Acts of the present Session. Some of the most important of these, the Married Women's Property Act, and Settled Land Act, 1882, occupy but a very small space in Mr. Lely's pages, but he shows himself fully alive to the far-reaching legal changes which they involve. We believe Mr. Lely was wise in not waiting for the events, uncertain as they must be, of the Autumn Session.

The Practice of Magistrates' Courts. By T. W. SAUNDERS, Metropolitan Police Magistrate. Fifth Edition. By JAMES A. FOOT, M.A., of the Middle Temple, Barrister-at-Law. Horace Cox (*Law Times* Office). 1882.

It is now some years since the last edition of this work was offered to the public; and in the meantime important legislative changes affecting its subject-matter have been effected. This fact necessarily involved a large amount of labour in bringing the work down to date, and sufficiently accounts for the learned author being unable to carry it through himself, and entrusting this edition to the hands of Mr. Foot, who has proved worthy of the confidence reposed in him.

We are not here dealing with a treatise on magisterial law in general, but with a concise statement of the entire Practice or Procedure obtaining in the Courts presided over by magistrates, or justices of the peace, whether in Petty or Quarter Sessions. The law discussed is complicated and intricate, and embraces subjects difficult enough to treat of lucidly in a work of large size, and still more so in one of small compass like the present. The division of the book is on a readily intelligible basis. The first portion deals with the practice in matters of Summary Jurisdiction, whether on information or complaint. The subjects are discussed in chronological order; thus, chapter 3 deals with the compelling attendance of parties and witnesses, and the summons and the warrant; chapter 4 with the appearance and non-appearance of parties or their witnesses, and adjournments; chapter 5 with the hearing; chapter 6

with the judgment and execution and their incidents. In chapter 8 proceedings in cases of indictable offences are next discussed; and a considerable portion of this chapter required to be new matter, owing to the extensive changes worked by the Summary Jurisdiction Act, 1879 (42 & 43 Vict., c. 49); the next few chapters are devoted to the working out of the details of the practice, also in their chronological order. Then follow miscellaneous matters, such as powers of justices to send to reformatories or industrial schools, protection orders, sureties to keep the peace, and the like. The second portion deals with the practice in matters which are brought before the justices sitting in Quarter Sessions where their jurisdiction is not summary. This portion is subdivided in its turn, as the matters dealt with concern (*a*) the criminal or (*b*) the civil jurisdiction of the Sessions. An Appendix sets out the Statutes affecting the subject-matter of the work. We confidently recommend this book, and are sure that Mr. Foot's labours will be of considerable assistance, not only to all who may wish to acquire a general notion of the practice in Courts of Petty and Quarter Sessions, but also to the practitioner in these Courts. The compact and handy volume before us contains much valuable matter, and the recent cases and Legislation have been carefully incorporated. On the whole, it is an accurate concentration of an important branch of Law.

The Married Women's Property Act, 1882, together with the Acts of 1870 and 1874, and an Introduction on the Law of Married Women's Property, &c. By RALPH THICKNESSE, B.A., Christ Church, Oxford, and of Lincoln's Inn, Barrister-at-Law. W. Maxwell and Son. 1882.

This is at once an elegant and a convenient edition of an Act of very great importance, and which is sure to produce considerable additions to legal literature, alike in the matter of Case-Law and of editions of the Act giving rise thereto. Mr. Thicknesse seems to have taken a leaf out of the book of Holy Church in the practice of saying the Canonical Hours by anticipation, when he tell us, while dating his own Preface, "October, 1882," that the Act "*came* into operation on the 1st January, 1883."

After this initial touch of haste, however, our author goes carefully and clearly through the legislation of which the

Statute under consideration is the latest, but in all probability by no means the last, phase. We observe that Mr. Thicknesse speaks as though Protection Orders would still be sought and granted. But will they not practically be extinguished by the operation of the Act of 1882? The Act is far from being plain sailing for its commentators, and Mr. Thicknesse does not attempt to disguise this from his readers. His Introduction and Notes strike us as being both practical and suggestive.

A Practical Treatise on the Law of Auction. By JOSEPH BATEMAN, LL.D. Sixth edition, by OLIVER SMITH and PATRICK F. EVANS, of the Inner Temple, Esqrs., Barristers-at-Law. W. Maxwell and Son. 1882.

The Law of Auction, though not perhaps quite so full of striking scenes in nineteenth century London, as it was in Rome or Pompeii in the days of *Divus Nero*, is yet one which has provided us with some sensation in recent days. Mr. Oliver Smith and Mr. Patrick Evans appear to us to have treated Dr. Bateman's work very judiciously, as editors of its sixth issue. They have very properly thrown together the collection of Forms into a separate part of the Appendix, and have, on the other hand, introduced the leading Cases as foot-notes to the text of the book. Consulting the Treatise with some curiosity on a point which has quite lately been mooted, and seems not unlikely to be brought to trial, viz., the Auctioneer's alleged right of expulsion, on the ground that the Auction-room is his private room, we think that Dr. Bateman's language reads against that view, though we do not find any direct expression of opinion on the point, which is one far from devoid of importance.

The English Auctioneer differs in many respects from his prototype under the Roman Empire. Such a man as Lucius Cæcilius Jucundus, of Pompeii, whose Tablets have been lately discovered and commented upon by members of the Academy of the *Lincei*, in Rome, and of the Royal Society of Literature in London, was evidently a Banker, or *Argentarius*, of considerable means, and of most methodical habits. The records of the Auction-room traced through the classical authors, and the Pompeian and other Tablets, to the present day, would form a curious chapter in the history of Western Law and Western Civilisation. Messrs. Oliver Smith and Patrick Evans

had a difficult task to perform, and in their new recension of Dr. Bateman's well-established work they have given it a fresh lease of life, as a text-book of practical value alike to the Legal Profession and to Auctioneers. The Tables are both numerous and full of minute and useful details. The Rules for valuing Property might be studied with great advantage by landowners, as well as by their agents and stewards.

A Concise Practical Treatise on the Law of Property. By H. W. Boyd Mackay, LL.B., of the Middle Temple and King's Inns, Esq., Barrister-at-Law. H. Sweet. 1882.

The author of this work has sought to place before his readers a compendium of the multifarious rules and exceptions concerning Realty and Personalty. But we fear that he has attempted too great a task within the dimensions allotted to it. Mr. Mackay begins with subjects of property, and tells us how they are created and determined; he next proceeds to enlarge on the commencement of title, the devolution of chattels and hereditaments on death, and their transmission on marriage. The question of contract is afterwards dealt with, and extends over seventeen chapters. Then follow dissertations on the rule in Shelley's case, on the *cyprès* doctrine, on perpetuities, and on mortmain. Trusts, Registration, Judgments, Bills of Sale, Bankruptcy, and Liquidation complete the chapters of this book—a book well intentioned and well designed, but lacking somewhat in digestion and completion. Since the volume has passed through the press, certain modifications, notably with regard to the property of married women, and bills of sale, have been made by the Legislature, which seriously impair the value of the work as an exponent of the existing law. This of course can in no manner be laid to the charge of Mr. Mackay. But why, in his dissertation at p. 2, on easements as distinguished from natural rights, is there no reference to the very important case of *Angus* v. *Dalton?* Again at p. 103 the dictum of Mr. Mackay that "a contract to sell property, for example land, is conditional on the vendor having, and being able to prove that he has, as *perfect a title as the purchaser shall require,*" is by far too elastic and general in its conception. At p. 282, where mistaken belief as affecting the validity of contracts, &c., is treated of, we miss any notice of the well-known case of *Brisbane* v. *Dacres*,

5 Taunt., 143; and we regret to add that at p. 293, on "Misrepresentation and Concealment," the law is so widely stated, and so much condensed, that the reader himself may be in danger of falling an easy prey to both the evils under consideration. Page 317 gives us a brief note concerning the concealment of an existing mortgage from a second mortgagee, where we are surprised to find that the author contents himself with quoting *Stafford* v. *Selby*, and omits all reference to the Statute (4 & 5 W. & M., c. 16) on which the question depends, as also to the subsequent case of *Kennard* v. *Futvoye* (2 Giff., 81), which contains a very important judgment on the point at issue.

A feature in Mr. Mackay's work decidedly worthy of praise is his reduction of technical terms to a minimum, which will render the reading easy to the student and beginner. An Appendix contains a reprint, with some verbal alterations, of an article on Personal Equities as operating on indefeasible titles, which was contributed by the learned author to this *Review*, and which will doubtless be useful for reference. The book is well printed, and likely to be acceptable to many readers, as comprising within the compass of a single volume a fairly concise statement of the Law of Property, upon which there can be no doubt that considerable pains have been bestowed by the author.

The Law and Practice Regulating Merchant Shipping. By T. J. Pittar, of the Secretary's Office, H.M. Customs. Edwin T. Olver. 1882.

Mr. Pittar, from his official position, is enabled to offer ship-masters and ship-owners much valuable aid in understanding the nature and extent of their liabilities under the several Merchant Shipping Acts. It is extremely probable, as the author believes, that those liabilities have been hitherto far too little realised by the classes most directly interested, and a Manual emanating from the Secretary's Office at the Custom House is more likely to win its way with them than a Treatise from the pen of a member of the Bar. We are glad to note, however, that our valued contributor, Mr. Almaric Rumsey, has assisted the author in the definition of a "Natural-Born British subject," a very crucial point in such a work as the present. The Acts of 1854 and 1876 necessarily form the substratum of the book, the

annotations following the sections to which they refer. As a commentator on the Acts, Mr. Pittar appears to be generally clear and practical, and masters who follow his recommendations will usually find themselves on the safe side with respect to the regulations of the Board of Trade and the requirements of the Customs. A special section is devoted to the important and little-studied subject of Quarantine; but we remark, not without surprise, that Mr. Pittar seems entirely unacquainted with Sir Sherston Baker's *Laws relating to Quarantine*, though published in 1879. The list of places where there are British Consular Officers, at p. 217, might certainly be extended, and some of the names require revision as to their orthography. These points will doubtless be attended to in a future edition of Mr. Pittar's useful work.

The Bills of Sale Acts, 1878 *and* 1882. With an Introduction and Explanatory Notes, showing the changes made in the Law with respect to Bills of Sale. By EDWARD WILLIAM FITHIAN, of the Middle Temple, Esq., Barrister-at-Law. Stevens and Sons. 1882.

Mr. Fithian's object in preparing this edition of the New Act is in many respects very different from that of Mr. Indermaur, and the two supply different needs. Mr. Fithian is in a position to place before us very accurately the mind of the promoters of the new Legislation, and his Notes are largely directed to that end. In the absence of judicial interpretation as yet, this is a very useful feature, and it adds much alike to the value and the interest of the learned author's Introduction and Notes. And we cannot doubt that such information will be of material assistance to counsel when cases first arise under the new Act. The account which Mr. Fithian gives of the proceedings before the Select Committee, which resulted in the Amending Act of 1882, and of the evidence of County Court Judges and Registrars in reply to the Lord Chancellor's Circular of 1881, throws considerable light on the Act itself. The witnesses examined appear to have been singularly few, but their testimony as to the evils which the Bill was designed to remedy, proportionately strong, as was that of many of the Judges of County Courts.

We do not doubt that Mr. Fithian's book will maintain a

high place among the most practically useful editions of the Bills of Sale Acts, 1878 and 1882.

The Law Relating to Electric Lighting, being the Electric Lighting Act, 1882, with a Continuous Commentary, Expository and Critical, a General Introduction, Appendix of Board of Trade Rules, &c. By GEORGE SPENCER BOWER, B.A., of the Middle Temple, Barrister-at-Law; and WALTER WEBB, Solicitor of the Supreme Court. Sampson Low and Co. 1882.

In presenting us thus early with a book on the Law of Electric Lighting, Mr. Bower and Mr. Webb are, as expositors of the Law, somewhat ahead of the age. Nevertheless, the various forces which they marshal before us in their Introduction, the Authorities, Major and Minor, the Companies which propose to supply alike authorities and people, and the Board of Trade, which is to mediate between contending parties, are all in the field, and there have already been some pretty passages of arms.

That there should be such conflicts was, under the circumstances, inevitable, and, indeed, we can hardly think it a desirable thing that such a considerable change as is involved in a system of public and private lighting should come upon us unawares, or without the fullest taking of security on behalf of the many different interests at stake.

The Board of Trade necessarily occupies a foremost position in the discussions which centre round the new system. The authors of the work before us seem to be very fair to the Board, which has rendered considerable services in other branches of administration with which it has been entrusted. It must not be forgotten that the new lighting will not only be a novelty in itself. It will create new powers to be placed in the hands of authorities old and new, and it will also create new offences. The fraudulent abstraction of electricity is, practically, an offence of the future, but it is provided by the Act of 1882 that it shall be treated as simple larceny, and be punishable accordingly. Let no one who may be tempted to steal electricity think that he stealeth trash.

The Electric Lighting Act, 1882, is not a lengthy one, considering the wide and complicated interests involved. The introduction which Messrs. Bower and Webb have prefixed to it is, in fact, longer than the Act of which it is explanatory.

But as a narrative of the history of the Act and of the circumstances which have led up to and accompanied its passing, the introduction is well worth careful study. Whether the Electric Light be destined to be *the* light of the future or no, the Legal Profession and the Public may both feel much indebted to Mr. Bower and Mr. Webb for their useful and interesting edition of the Electric Lighting Act, 1882.

Smaller Books and Pamphlets.

An "Utter Barrister of Lincoln's Inn" has penned a Letter which he entitles *The Truth about the Bar and about the Solicitors* (Yates, Alexander, and Shepheard, n.d., Preface dated January 12th, 1882). The truth which Mr. "Innes Lincoln" endeavours to bring home is evidently this: That, in his conception, anything like an amalgamation of the two branches of the Legal Profession as at present existing in England would be very much to the advantage (pecuniarily) of Solicitors, and to the disadvantage of the Bar. The Solicitors would, on the other hand, lose the sort of elevating moral influence which the Utter Barrister believes his Order to have exercised over the other branch of the Profession. Thus there is no knowing what might happen. The references to Robespierre and Danton, Nobiling, and the Nihilists, are, however, sufficiently indicative of consequences which we trust never to see in our day. We are not quite clear why the learned author of this pamphlet is so hard upon Advocates as distinguished (in his mind) from Barristers. When we read that all the naughty men above named were Advocates, the fact seems to recoil upon the head of the "Utter Barrister" and his Order rather than upon Solicitors. As to the practical working of any scheme of amalgamation, the "Utter Barrister" is probably right. But we imagine there are more Solicitors who would like to become Barristers than members of the Bar who want to become Solicitors.

Mr. David Crichton, Advocate at the Scottish Bar, in his pamphlet on the *Exemption from Local Rates of Scientific, Literary, and Artistic Societies* (Edinburgh: William Green, 1881), has taken up a subject on which no little conflict of decisions appears to exist. Personally, the learned author does not approve of the exemption. Practically, we should say from

what we know of the actual payment of the Rates by such Societies, the doubts as to carrying the exemption in any given case are so considerable that the rates are paid much more extensively than Mr. Crichton would seem to think. If it be necessary, as we understand it recently to have been held, that the care-taker, whose residence on the premises has been supposed to be allowed, should be a "menial servant," such a requirement would probably in most cases suffice to bar the claim to exemption. If we ourselves had an objection to raise, it would be directed against the practically inoperative character of a statutable exemption, rather than against the exemption itself, which seems to us equitable in principle.

In his *Historical Outline of the English Constitution for Beginners* (Longmans, 1881), Mr. DAVID WATSON RANNIE has aimed at compressing a large task within a very small compass. The space within which his account of the Constitution is restricted has necessarily led to incisive statements, and to a general absence of the citation of authorities. But it need not have led to inexactitudes in matters of fact, such as the date of the Triple Alliance on p. 146, or the more serious error on p. 47, where Mr. Rannie calmly introduces the "Dauphin, or French heir-apparent," in the last days of King John of England, A.D. 1216. This, we need hardly say, is nearly a century and a half before Humbert II., last of the old Counts or Dauphins of Vienne, released his subjects from their allegiance, and made over his Principality in 1349 by donation *inter vivos* to Charles, grandson of Philip VI. of France, to be ruled as a separate lordship, and to be held, as he and his predecessors had held it, as a Fief of the Empire. The gift was accepted, but the subsequent Dauphins dispensed themselves from doing homage to the Emperor.

Metropolitan Police Court Jottings, by a Magistrate (Horace Cox, 1882), is the unpretending title of a little book containing much sound matter on what is really a large subject. The Police Court Magistrate sees many sides of human nature, and very often some of the worst. On the whole we may confess to a pleasant surprise that the Magistrate whose "jottings" are before us retains so much geniality of character after experiences such as form the substratum of his reminiscences. With regard to the practice of constables as to the committal of that large class so well known to the charge lists as "drunk and incapable," the statement made by our author

does not seem to us very satisfactory. The practice is confessedly destitute of legal authority, if it be not distinctly illegal, and we cannot say it appears to us a good thing for the supposed guardians of the majesty of the law to be themselves so constantly law-breakers. But in the matter of arrests generally it is to be feared that, notwithstanding Mr. Howard Vincent's praiseworthy labours, constables have small knowledge of the law, and less regard for it.

The Student's Pocket Law Lexicon (Stevens and Sons, 1882), is a *multum in parvo* for the benefit of those who have little Latin at command, and not much acquaintance with the terminology of Roman and English Law. Considering the very brief space to which the compiler has necessarily been restricted in his explanations, the information given is fairly useful. But to say that there are "four Inns of Court" does not very lucidly set forth the nature of those Honourable Societies, nor the history of their position in relation to the Bar. Again, we certainly think that "Innominate Contracts" require a more careful explanation, as a term of Roman Law, than they have received in the pages of the *Pocket Law Lexicon.* In the matter of Indian Law terms there is room for improvement. The Court of "Sudder Miamut Adawbut" is unto us unknown. We presume the editor means "Nizamut Adawlut." But we do not think that the Divisional names, so to speak, of the old Supreme Courts at the Presidency Towns have other than an antiquarian interest in these days.

An Exposition of the Conveyancing and Law of Property Act, 1877, by JOHN HEWITT, Solicitor (Stevens and Sons, 1882), contains firstly, the text of the Act; and secondly, the exposition thereof. This plan enables Mr. Hewitt to go at greater length into the questions raised by his subject than he could have done if his commentary had been intercalated in the text. He takes advantage of this circumstance to cite short judgments bearing on the subject, and to introduce forms of mortgage, and other useful matter. Some of Mr. Hewitt's annotations, we must confess, display a certain degree of *sancta simplicitas.* Thus his commentary on sections 72 and 73 is contained in the following brief words: "The author is entirely ignorant of Irish Law." This is very like the famous chapter on "Snakes in Iceland."

The Partition Acts, 1868 *and* 1876, *with the Decided Cases, and an Appendix containing Judgments and Forms of Order*, by Mr. W.

GREGORY WALKER, B.A., late Scholar of Exeter College, Oxford, and of Lincoln's Inn, Barrister-at-Law (Stevens and Haynes, 1882; second edition, enlarged), testifies alike to the author's industry and to the utility which his convenient manual of Partition Law has been found to possess. In the present revision, Mr. Walker has taken into full consideration the Reported Cases and the Practice under the Act, and has, where he judged it necessary, rewritten some of his text. The Forms are taken from actual cases, of which the parties and dates are given, together with the names of the Judges, thereby showing us at once in whose steps we are treading. The book is of a very portable size, and the type of his annotations is as clear as that of the text of the Acts, though slightly smaller.

The Statutes of Practical Utility in the Civil and Criminal Administration of Justice, passed 44 and 45 Vict. (1881), by Mr. J. M. LELY, Barrister-at-Law, Vol. I., No. 1 (Henry Sweet, and Stevens and Sons, 1881), is a very valuable supplement to Chitty, by the same editor. Mr. Lely's handiwork is so good and so well known that it is unnecessary to do more than recommend this new publication to the Legal Profession, as well as to Magistrates and Justices of the Peace, each and all of whom will find it a handy book of reference. Among the more generally interesting Acts printed we may single out the Statute Law Revision Act, the Conveyancing Act, and the Fugitive Offenders Act, all of 1881. The Statute Law Revision here embodied goes back as far as Ch. 1 of the Provisions of Merton, 20 Hen. III., c. 1.

In *A Concise Abridgment of the Law of Real Property*, by Mr. J. A. SHEARWOOD, of Lincoln's Inn, Barrister-at-Law, (Second Edition, Stevens and Sons, 1882), we have yet another of Mr. Shearwood's clear and useful manuals for the student. It seems to us to be excellently adapted to its purpose, and is in the present edition brought down to date. The author is careful to support his statements throughout by references to well-known text-books, ancient and modern, varying from Glanville to Dart's *Vendors and Purchasers*. References are also given to the necessary case-law of the subject, including some cases which have been very fully described in this *Review* as, *e.g.*, *Angus* v. *Dalton*, in an article by W. Markby, D.C.L., the learned Reader in Indian Law in the University of Oxford, in No. CCXXXII., for May, 1879.

Settlements of Land, being an Enquiry whether they hinder Husbandry, by Mr. JOHN SAVILL VAIZEY, of the Middle Temple and Lincoln's

Inn, Barrister-at-Law (Henry Sweet, 1882), is the title of a well-considered argument by a member of the Bar of long standing on one of the most hotly debated questions of the day, but unfortunately one which is too often raised by persons who have not sufficiently—if at all—studied the subject from its historical and legal aspect. Mr. Vaizey, who himself argues for the negative on the point to which his pamphlet is mainly devoted, places the juridical position of the tenant for life of settled lands clearly before his readers, and takes *seriatim* the objections generally brought against that position. He also avails himself of the opportunity of criticising, *obiter*, some features in the Settled Lands Act, recently promoted by Earl Cairns. Mr. Vaizey's pamphlet may be commended to all who desire to read both sides of a question which has to be faced, and which it is most important to know thoroughly and treat dispassionately.

Fugitive Offenders : being the Law and Practice relating to Offenders flying to and from this country. By F. J. KIRCHNER, Criminal Investigation Department, Metropolitan Police. (Stevens and Sons, 1882.) It is something of a novelty to chronicle an accession to Legal Literature from the pen of a member of the Metropolitan Police. Mr. Kirchner, whose branch of work is a special one, has brought together into a small compass a great deal of useful information on a subject of growing importance. He has evidently watched closely the attitude of Foreign countries on the question of Extradition, to which in fact his own immediate subject belongs. The several Acts and Treaties governing Extradition and Fugitive Offenders are set forth at length, yet the whole forms a light and portable manual, commendable alike for its conciseness and its handiness.

In *A Few Brief Remarks on the Recent Legislation for the Colleges and the University of Cambridge* (Longmans, 1882), Mr. ROBERTS POTTS, M.A., of Trinity College, Cambridge, draws attention to some points well worthy of consideration. When he insists upon the fact that the Master and Fellows of a College are "neither the owners nor the proprietors of the property which they administer," but are, "in fact, simply trustees," he hits equally well the position of the Masters of the Bench at an Inn of Court. This point is perhaps not sufficiently realised either at the Universities or the Inns of Court. Mr. Potts thinks the tendency of recent legislation for Cambridge to be in

the direction of a "revolution," and of the "destruction of the existing system by the introduction of another more in accordance with the Foreign Universities." Very similar views have also been expressed with regard to the legislation for the sister University. It remains to be seen how far such a radical change will really be the consequence of the intervention of the Legislature in University Reform.

Analytical Tables of the Law of Real Property, with Notes, by Mr. C. J. TARRING, of the Inner Temple, Barrister-at-Law (Stevens and Haynes, 1882), will supply the law student with help of a kind found very generally useful. The Tables, which are based on Stephen's Blackstone, have gone through the practical test of being employed as aids to the mental arrangement of the knowledge of the subject required for examinations, and will no doubt be appreciated by the large and increasing classes whose requirements they are intended to meet.

Outlines of Jurisprudence, for the use of Students, by B. R. WISE, B.A., late Scholar of Queen's College, Oxford (James Thornton, Oxford, 1881), is a little manual intended as a sort of analysis and running commentary of the works of Austin, Maine, Bentham, &c., read in the Oxford Schools, as well as of Gaius and Justinian. The idea is a practical one, and if Mr. Wise would go carefully through his text, correcting the errors of press which at present too often play havoc with his language, the second edition may be really useful to the student. We do not for a moment suppose that the author can have meant to make Sir Henry Maine speak of the Prætor as "*vir pietate gratiis*," or that he meant himself to tell us of an "*actio hirecta*," or to cite Mr. Sandars almost throughout as "Sandar." We observe that the new Oxford School of Jurists, if we may so call them, *e.g.*, Professor Holland, Dr. Markby, Mr. Digby, and Sir William Anson, have made a considerable impression on Mr. Wise, much of whose work is in fact a sort of introduction to the study of Professor Holland's *Jurisprudence*.

The Metropolis Management and Building Acts (Amendment) Act, 1882 (Stevens and Haynes, 1882), by Mr. ALFRED EMDEN, of the Inner Temple, Barrister-at-Law, forms a convenient supplement to the larger work of the learned author on *Building Leases and Contracts*. The subjects dealt with in the Amending Act of 1882 are very important, and the removal to the new Courts of Justice will probably hasten the commencement of the work of demolition and reconstruction under its provisions. Mr. Emden

is fully alive to the considerable interests involved in the new legislation. We quite agree with him both in the feeling that the Public Health Act, 1875, is inadequate in the matter of drainage, and also in his prevision of the difficulty likely to arise as to the criteria for the distinction between a "dangerous" and a "neglected" structure under the new Act.

The Municipal and Corporations Act, 1882, with parts of the Ballot Act, 1872, and Parliamentary and Municipal Registration Act, 1878, and Rules of the Judges, &c., by Mr. THOMAS WILLIAM SAUNDERS, Metropolitan Police Magistrate, and Mr. WILLIAM EDGAR SAUNDERS, of the Middle Temple, Barrister-at-Law (Horace Cox, *Law Times* Office, 1882), is the title of a fresh work from the largely-employed pen of the well-known Metropolitan Police Magistrate. Mr. Saunders has brought together in a very compact form all the provisions of the Legislature and the Judicature bearing upon the subject-matter of his book, and the result is a *multum in parvo* as a work of reference for municipal officers, as well as for members of the legal profession engaged in the numerous cases which may arise on points under the leading Act or the other Acts involved.

A Collection of Concise Precedents of Wills, with an Introduction, Notes, and Appendix of Statutes, by Mr. CHARLES WEAVER, B.A. (Stevens & Sons, 1882), is intended primarily for the student and articled clerk, by whom it will be found convenient, though, as the compiler himself warns them, only as an auxiliary to the fuller Treatises on the subject. The Statutes printed commence, as regards Wills *simpliciter*, with 1 Vict., c. 26, and include the "Domicile" Act of 1861 (24 & 25 Vict., c. 121), and the Trustees' Relief Act, 1859 (22 & 23 Vict., c. 35), as well as the Conveyancing and Law of Property Act, 1881, and the Settled Land and Married Women's Property Acts, 1882. These last are, of course, important in their bearing on certain aspects of testamentary powers, but one result of our present system of producing Legal literature is that many Acts get printed and reprinted in all sorts of volumes, great and small, some of which may seem to have but a very indirect connection with the subject of the Acts so printed. The expression "Will of a single lady" at p. 73 is doubtless polite, but does not at first sight recall the familiar "*feme sole*" of ordinary text-books, and it might seem to suggest an invidious distinction when contrasted with the "Married Woman" of p. 84.

THE

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I.—THE FREEDOM OF THE NAVIGATION OF THE SUEZ CANAL.

MORE than two thousand years have elapsed since a Prince of the House of Pharaoh was warned by an oracle, that if he persisted in his enterprise of opening out a canal from the River Nile to the Red Sea, he would labour for the benefit of the Foreigner. The idea, however, of such an undertaking did not originate with Pharaoh Necho. It was the legacy of an earlier race of Egyptian kings, who led their victorious armies into the heart of Asia, and whose conquests are recorded on the walls of the Memnonium, at Thebes, in Upper Egypt. The enterprise, which Pharaoh Necho is said to have abandoned in deference to the oracle, was resumed by Darius, the Persian, upon his conquest of Egypt, after an interval of about a century from the death of Pharaoh Necho, but Darius also is said to have abstained from completing his canal from a fear, that the salt water of the Arabian Gulf would find its way into the Nile, and poison its sweet water, upon which the inhabitants of the Delta of Lower Egypt were dependent for their daily supply of a necessary of life. This dependency on the water of the Nile was, in fact, the test of Egyptian nationality, for Herodotus tells us in discussing the question as to who were the Egyptians of his day, that the Egyptians were all those who drank of the water of the Nile. A canal, however, from the

Nile to the Arabian Gulf, if not completed by King Darius I., was undoubtedly constructed under the Ptolemies, and a canal in correspondence with it was opened out from the Nile to Alexandria. Whether the canal of the Ptolemies was restored by the Romans, or a new canal opened out by the Emperor Trajan, is a moot point, but there is good reason to believe that within half-a-century after the death of Trajan (A.D. 117), a person might embark in a vessel at Alexandria, and prosecute his voyage by canal to the Red Sea, and thence to India. Lucian, who was the Official Secretary to the Roman Governor of Egypt, in the reign of the Emperor Marcus Aurelius, recounts an anecdote* which may warrant us in believing not only that the navigation through the sweet water canals was open in his day between Alexandria and the Red Sea, but that it was usual for vessels which had passed through the sweet water canals from Alexandria to Clysma, on the Arabian Gulf, to continue their voyage to India. Testimonies of the sixth century also show that the communication between the two seas through the sweet water canals, had not been interrupted at that time. It remained, however, for Amrou, the victorious Lieutenant of the Khalif Omar, upon his conquest of Egypt in the seventh century, to restore the whole line of the canal from the Nile to the Arabian Gulf, as at that time there was no schism in the Khalifate, and it was of importance to keep open the water communication between the newly-conquered province of Egypt, and the Asiatic capital of Islam. We may doubt the accuracy of the story that Amrou proposed to the Khalif to open out a salt water communication between the Arabian Gulf and the Mediter-

* The anecdote was to this effect, that a youth who was in charge of a tutor at Alexandria, slipped away from him and went on board a vessel, which was bound to Clysma, and thence to India, and that in due course of time the youth returned by the same route, and found that in the meantime his tutor, not being able to account in a satisfactory manner for the disappearance of his charge, had been put to death.—*Pseudomantes*, sec. 44.

ranean, and that the Khalif objected to the piercing of the isthmus, on the ground that it would open out the country to the foreigner. The story may be true in its main features, but the objection attributed to the Khalif is probably apocryphal, as the foreigner, whom the priests of Memphis were afraid of in the time of Pharaoh Necho, was not a western, but an eastern barbarian.

The apprehension, which is said to have deterred several monarchs before the time of the Ptolemies, from completing the fresh water communication between the two seas, was founded on the supposed higher level of the Red Sea, which was believed to be from 25 to 30 feet above the level of the Mediterranean. The Ptolemies took care to guard against any possible danger from this source by a system of sluices or locks. The term "Clysma," by which Lucian describes the terminus of the canal in the Arabian Gulf, signifies in its ordinary sense a beach, or the wash of the sea which has formed a beach.* It is stated by Ptolemy the Geographer that at the junction of the canal with the Arabian Gulf, a fort had been built in the time of the Romans, where troops were stationed to guard the entrance of the canal, and to superintend the sluices or locks through which vessels passed from the canal into the salt water. The apprehension above alluded to, was not ascertained to be altogether visionary before 1847, when a Commission of scientific men of various nationalities undertook to determine the respective levels of the two seas.† The late Mr. Robert

* In a similar manner the sluices which united the canal of Bruges with the estuary of the Scheldt, gave to the port the name of Ecluse or Sluys.

† It is singular that M. Lepère, the chief Civil Engineer, who accompanied General Bonaparte in his expedition to Egypt, should from some difficulty in making his observations have calculated the Red Sea to be 33 feet higher than the Mediterranean. Leibnitz, however, in his first memoir on the conquest of Egypt, which the Minister Pomponne in 1672 submitted to Louis XIV., had pronounced the supposed difference in the level of the two seas to be a fable. The great French astronomer Laplace, amongst others, protested against Lepère's miscalculation.

Stephenson represented England on that Commission. Their observations established the fact that the two seas had the same level within a few inches. Mr. Robert Stephenson however, was of opinion that any canal would be silted up with sand and mud in the course of a few years, and his opinion deterred English capitalists from embarking on an undertaking which had at that time received the approval of the Viceroy of Egypt. M. Ferdinand de Lesseps, who was Consul for France, and resided at Cairo from 1832 to 1839, was no doubt acquainted with the original scheme, which had been submitted to Mahomed Ali Pacha in 1834, by M. Lambert and another distinguished French engineer, and of which the details were not worked out before 1838. It was on this occasion that Mahomed Ali, having consulted the late Prince Metternich, was advised by the great Austrian statesman, who approved the general scheme, that, if he undertook the enterprise, he should take care to have the canal neutralised by an European treaty. The project, however, of the French engineers was ultimately abandoned, notwithstanding that a Dutch company undertook to find funds for its execution. It was reserved for M. Ferdinand de Lesseps to revive the idea after the deaths of Mahomed Ali and his grandson Abbas Pacha, the third Viceroy of Egypt.* He had the advantage of the Report of the Commission of 1847, and to M. Ferdinand de Lesseps belongs the honour of having successfully accomplished a work, which had been the dream of Egyptian Princes during countless centuries,

* It will be found stated in some books, amongst others, in the *Almanach de Gotha* for 1878, which gives the genealogy of the ruling family of Egypt, that Abbas Pacha was the second Viceroy. The mistake has arisen from the fact that it is not generally known that Mahomed Ali who first obtained the title of Viceroy under an Imperial Firman of 12th February, 1841, abdicated in favour of his adopted son, Ibrahim Pacha, who was appointed Viceroy under a *Hatti Scheriff* of 1st September, 1848. Ibrahim, however, died before Mahomed Ali, and was succeeded by Abbas Pacha, the son of Mahomed Ali's second son, Tussoun, as Third Viceroy.

and had been the despair of scientific men until the level of the two seas had been ascertained to be nearly identical.

It has been supposed that amongst the numerous schemes of intermarine canalisation, which have occupied from time to time the attention of the rulers of Lower Egypt, there was one which contemplated a direct communication between the head of the Arabian Gulf and the ancient Pelusiac mouth of the Nile. M. de Lesseps however had the good sense to appreciate the impracticability of any such scheme in the present day, and instead of undertaking a contest with the active forces of nature in a sea, whose rolling surf renders the site of the ancient Pelusium unapproachable even by a boat, he preferred to form a new town in the midst of Lake Menzaleh, and to open out an artificial channel through the black mud of a shallow lake, in which the three most easterly of the ancient mouths of the River Nile are supposed to be now lost. This Channel extends 21 miles from Kantara on the mainland to Port Saïd, the new town, which is built on an island appurtenant to a narrow strip of land that separates Lake Menzaleh from the open sea. Its dimensions are, or ought to be, 330 feet in width and 26 feet in depth. Although therefore the Charter of 1856, whereby Mahomed Saïd Pacha, the fourth Viceroy of Egypt, granted to the Universal Company for the piercing of the Isthmus the usufruct of a canal for 99 years, has described the Canal in the 14th Article as extending from Suez to Pelusium, its Mediterranean terminus does not abut on any ancient mouth of the Great River of Egypt. The dyke from Kantara to Port Saïd is in fact an artificial projection into the Pelusiac Gulf, as bold in its conception and as difficult in its execution as the ancient brick Pyramid of King Asychis, on which Herodotus tells us that there was an inscription announcing that it was more wonderful than any pyramid of stone, as

it was built of mud drawn up from the bottom of Lake Mœris by scoops fixed at the end of poles. Thousands of natives were employed in forming the dyke in Lake Menzaleh through which the Canal of M. de Lesseps finds an outlet into the Mediterranean Sea, and had it not been for the burning Egyptian sun which rapidly dried up the mud as it was thrown up from the bottom of the lake the construction of such a dyke across Lake Menzaleh would have been impracticable.

We have alluded to the grant of the Viceroy, Saïd Pacha, of 5th January, 1856, as the Charter of the Universal Company for the piercing of the Isthmus. There had been a previous Act of Concession of 30th November, 1854, but the grant of 1856 is the more complete instrument, which stipulated the conditions under which the Company should be constituted, and whilst it assured to the Company certain immunities and advantages, it imposed on it certain charges and obligations. The more important of these obligations for the purpose with which we are at present concerned, are contained in Articles XIV. and XV., which are as follows:—"Art. XIV. We hereby solemnly declare for ourselves and our successors, under the reserve of the ratification of His Imperial Majesty the Sultan, the Grand Canal Maritime from Suez to Pelusium, and the ports dependent thereon, open for ever as neutral passages for every kind of ship of commerce traversing it from sea to sea, without any distinction, exclusion, or preference of persons or nationalities, subject to (*moyennant*) the payment of the dues and the observance of the regulations established by the Universal Company, the Grantees, for the use of the Canal and its dependencies.

"Article XV. In pursuance of the principle laid down in the preceding Article, the Universal Company, the Grantees, cannot in any case accord to any ship, company or individual, any advantages or favours, which shall not be

accorded to all ships, companies or individuals under the same conditions."

Although we have spoken of the second grant of 1856 as the Charter of the Universal Company, it was subject to considerable revision, and the final instrument under which the Company was authorised to execute the Canal was in the nature of a bi-lateral contract between Ismaïl Pacha, the fifth Viceroy, and M. Ferdinand de Lesseps. It was this contract, bearing date the 22nd February, 1866, which was embodied in the *Firman* of His Imperial Majesty the Sultan, bearing date the 19th March, 1866.

The original scheme of the Canal under the grant of 1856 would thus appear to have contemplated its use by vessels of commerce only, and to have assured them of the neutrality of its waters as long as the Viceroy of Egypt and the Ottoman Porte should be at peace with all nations.*

His Highness Saïd Pacha did not live to witness the completion of the plans which he had sanctioned. He died in 1863, and was succeeded by Ismaïl Pacha, the second son of Ibrahim Pacha, and the grandson of the first Viceroy. It was with His Highness Ismaïl Pacha, the fifth Viceroy, that the Convention of 22nd February, 1866, was concluded, to which reference has been already made as embodied in the *Firman* of His Imperial Majesty the Sultan. Under this Convention many matters were re-arranged between the Viceroy and the Company, and certain further arrangements were concluded, under which it was provided that the Maritime Canal and all its dependencies should be subject to the Egyptian Police regulations. Further provisions were also made in case of the Egyptian Government

* It appears from a Report presented by M. de Lesseps to the Viceroy, Saïd Pacha, on 30th April, 1855, prior to the grant of 1856, that M. de Lesseps was required by the Pacha to make the Mediterranean outlet of his canal well to the eastward of the Damietta mouth of the Nile, so that it should not in any way interfere with the channel of the River.—*Parliamentary Papers, Egypt*, No. 6 (1876), p. 2.

being involved in war, and under Article X. it was provided that "the Egyptian Government may occupy within the circumference of the grounds reserved as dependencies of the Maritime Canal every strategical position or point which it shall judge necessary for the defence of the country. The occupation is not to cause any obstacle to the navigation, and shall respect the easements (*servitudes*) attached to the freeboards (*francs-bords*) of the Canal." It has been already observed that this Convention was ratified by a *Firman* of His Imperial Majesty the Sultan, so that it may be inferred from the language of Article X. of this Convention that both the Viceroy* and the Sultan contemplated the possibility of Egypt being involved in war without that circumstance causing any obstacle to the peaceable navigation of the Canal by vessels under a neutral flag. More than three years elapsed after the conclusion of this Convention before the Canal was completed; it was opened on 17th November, 1869, at which time a scheme of tonnage dues was settled by the Company with the approval of the Sultan.

It would appear that during the first three years after the opening of the Canal the traffic through it was much below the expectations of the Company, and that in 1872 the Company, of its own authority, made an increase in the transit dues. It further appears that in that year the British Government had commenced using the Canal for the conveyance of troops to India, and that the Canal Company under their concessions claimed the right of levying not only 10 francs per ton on the capacity of the transport ships, but also 10 francs per head on the passengers in them. Complaints arose in many quarters as to the illegality of the Company's action in this matter, and in January, 1873, the Ottoman Porte invited the European

* His Highness Ismaïl Pacha was not advanced to the rank of Khedive before 8th June, 1867.

Powers to send delegates to an International Conference at Constantinople to take into consideration a revision of the tariff of the transit dues of the Canal. The Conference, as proposed, was held at Constantinople in the autumn of 1873, at which time the Company was barely paying its expenses, in consequence of which a question had been mooted amongst the Maritime Powers whether they should not purchase the Canal from the Universal Company, and make arrangements for abolishing all transit dues by compensating the Company. The Ottoman Government, however, had taken an opportunity to make it known to the Maritime Powers that it could not admit, even in principle, the sale of the Canal or the formation of an International Administration on its own territory.* The main question discussed at this Conference was whether Moorsom's system of measuring the tonnage of ships should not be approved by the Conference as the system which should be applied to ships traversing the Canal, which was ruled in the affirmative. The resolutions, however, of the Conference in approving that system extended its operation to steamships of war and to steam troopships, and as the *procès verbal*† confirming these resolutions bore affixed to it the signatures of the representatives of twelve European Powers, the Ottoman Porte itself being represented by the President of the Conference and by two other Commissioners, it may be inferred that the use of the Canal by vessels of war as well as of commerce has become, since 1873, a matter of European concert. It follows, also, that the Sultan, in approving the Report of the Commission of 1873 has enlarged the privilege of the Canal Company in respect of the class of vessels which it may of right allow

* Despatch of Server Pacha to Musurus Pacha. 10th January, 1872.—*Parliamentary Papers, Egypt*, No. 2 (1876), p. 161.

† Annex to the *Procès Verbal*, No. 21, in the same Parliamentary Paper p. 327; also, *British and Foreign State Papers* (1873-74), Vol. LXV., p. 799.

to pass through the Canal, and that as long as the Province and the Empire shall be at peace with all nations the security of the navigation of the Canal is guaranteed by the neutrality of the Territorial Power, which neutrality all vessels passing from sea to sea will be bound under the Common Law of Nations to respect. On the other hand, if the Ottoman Porte should be at war with any other nation, the waters of the Canal would cease to be neutral as regards its adversary, and the adverse belligerent would be entitled to exercise all rights of war within the Canal equally as within any other part of the Ottoman territory. Such rights, for instance, might have been exercised by Russia during the war between that Power and the Porte in 1877. But at that time many of the European Powers had found it both economical and convenient to send their troopships and their relief corps, as well as their ships of war, through the Canal to their settlements and possessions in the far East. Great Britain had taken the lead of other nations in her use of the Canal, and the vessels of commerce and of war under the flag of England which passed through the Canal in 1877, were nearly four-fifths of the whole number that traversed the Canal, under the flags of fifteen nations, Russia and Turkey not being in that year included amongst them. It could cause no surprise therefore to Russia when the Earl of Derby, after declining to adopt M. de Lesseps' proposal for the neutralization of the Canal by an International Convention, intimated to the Russian Ambassador at London, that any attempt to blockade or otherwise to interfere with the Canal or its approaches would be regarded by Her Britannic Majesty's Government as a menace to India, and as a grave injury to the commerce of the world. It was in a corresponding spirit that Prince Gortchacow replied, that Russia considered the Canal to be an international enterprise, in which the Commerce of the whole world was interested, and which ought to be exempt from

all belligerent attack. "Give me a fulcrum on which I can rest my lever," was the great astronomer's saying, "and I will move the globe." We have in Prince Gortchacow's answer the recognition of a principle upon which the two European Powers, who have the largest interests in Asia, have both agreed, namely, that a work, which the constructive genius of man has after many vain efforts at last accomplished in the interest of both Hemispheres, shall not be at the mercy of his destructive genius under the pretext of belligerent right, if a single European nation should choose to pick a quarrel with the Ottoman Porte or its dependent State. A further important fact has been established by the recent military operations of the British army in Egypt, that an agreement amongst the nations of Europe to abstain from blocking the navigation of the Canal, if any of them should be unhappily at war with Egypt or with the Ottoman Porte, need not interfere unduly with their right of invading the enemy's *terra firma*. It will, in fact, not be necessary, even if the banks of the Canal have to be occupied as a base of military operations against the Capital of Lower Egypt, for the navigation of the Canal to be closed against neutral vessels passing from one sea to another. Their transit may be liable to some temporary obstruction, but their traffic need not be permanently suspended. Under these circumstances, it is obvious that an International Concert to exclude any enemy of the Porte from making the Canal a base of military operations against Lower Egypt, is not called for by any necessities of neutral commerce. To clothe the Canal with such a conventional neutrality would, in fact, operate to make Lower Egypt impregnable from the side of the Isthmus, for without such a base it would be idle for an enemy's army, equipped with all the modern appliances of warfare, to attempt to penetrate into Lower Egypt through the Desert. We may dismiss altogether the idea of neutralising the Canal by an Inter-

national Act in the sense in which the Black Sea was declared to be neutralised under the provisions of the Treaty of Paris of 1856, namely, by excluding all vessels of war from navigating its waters. The Maritime Powers have in anticipation negatived such a proposal, by their concurrent use of the Canal for the transit of their vessels of war and their steam transports laden with ammunition and troops.

The question of an International Protectorate of the Canal rests upon less exceptional grounds, but a Protectorate is a term of very varied import, whilst it generally implies positive action under circumstances which, if not very carefully defined, may lead to international complications more serious than those which it was designed to obviate. It must be observed, however, that a Protectorate of an active character cannot of right be exercised over the Canal by any concert of the Christian Powers without the consent of the Ottoman Porte, and the antecedent combination of the Protectorate of a Foreign Power with the Suzerainty of the Porte in the case of the Danubian Principalities is not an encouraging precedent for the Porte, regard being had to its results. On the other hand, a common Protectorate cannot lightly be undertaken by the Maritime Powers, as it savours very much of a collective guaranty *contra quoscunque*, and such a Protectorate, as already observed, unless carefully guarded, might give rise to embarrassing complications amongst the Signatory Powers. There is one mode of obviating the occurrence of disputes between the Protecting Powers as to the *modus operandi* in the case of a Common Protectorate, namely, by a delegation of their authority in the form of a mandate to one or more of the Powers which have the greatest interest in the free navigation of the Canal. It is clear, however, from a communication made by the German Chargé d'Affaires at London to Earl Granville on July 27th, 1882, that Prince Bismarck

was averse at that time to the co-operation of all the Powers in such a mandate, as the result of such a mandate would be to create an unlimited responsibility for the measures resorted to, without any control over them, and without the possibility of withdrawal.*

"Supposing," continues Earl Granville's despatch,† "the Conference to come to an agreement that the protection of the Canal must be undertaken by the European Powers, Prince Bismarck thinks such an arrangement could only be accepted unanimously on condition that all the Powers interested should take part in it, with equal rights as to measures of police for the Canal. Those measures of police, should, in his Highness's opinion, be maritime, and any steps for guarding the Canal ought to be the subject of discussion in each individual case. Prince Bismarck thought that public opinion would be in favour of an arrangement of this kind and Germany would be ready to take part in it. The Austrian, Italian and Russian Governments also shared his view."

Prince Bismarck on this occasion appears to have misconceived in some degree the purport of Earl Granville's immediate communication, which had in view only a temporary measure of protection for the Canal during an abnormal state of affairs, during which the *de jure* Government was not in a position to assert its rights and to discharge its responsibilities towards other nations. Earl Granville, in replying to the Prince's communication, stated very concisely the views of the British Government with regard to the protection of the Canal for an unlimited time.

* The same language was used by Baron Hirschfeld at Berlin in communicating the views of the German Government to the Italian Ambassador at Berlin.—*Documenti Diplomatici. Questione di Egitto* (1881-82), p. 342 and p. 344, presented to the Camera dei Deputati by the Minister of Foreign Affairs, Mancini.—(*Italian Green Book.*)

† Despatch of Earl Granville to Sir J. Walsham, of July 28th, 1882.—*Blue Book, Egypt*, No. 17 (1882), p. 243.

"We considered the permanent obligation to maintain its security to rest upon the Egyptian Government. In its default, recurrence may be had to the Sovereign Power." This view of the obligation of the Egyptian Government to maintain the security of the navigation of the Canal is in accordance with the terms of the Convention of 22nd February, 1866, already alluded to as having been ratified by the *Firman* of his Imperial Majesty the Sultan. Under Article 9 of that Convention it is stipulated that the Maritime Canal and all its dependencies remain subject to the Egyptian police, which shall be freely exercised therein as elsewhere in the territory of Egypt in a manner to assure the good order, the public security, and the execution of the laws and regulations of the country. It may be observed that it is not unusual to speak of the Canal as if it were French property. The truth is that a French Company has the usufruct of the waters of the Canal for a term of years, after which that usufruct reverts to the Khedive, meanwhile the property of the territory through which the Canal passes remains vested in the Khedive, and the supreme dominion over it rests with his Imperial Majesty the Sultan.

The case, however, of *vis major* is not provided for by the Convention of 1866, nor was it within the scope of such a Convention to provide for the emergency of a war in which either the province of Egypt or the Empire should be involved, and yet it is precisely in the case of such a war that the navigation of the Canal may of right be blocked, and the commerce of both Hemispheres interrupted. Surely it would be possible for the nations of Europe to come to an understanding to prevent such a calamity, and if it be not possible to eliminate war altogether from the catalogue of remedies for International wrong, it would be a discredit to the civilization of both the Christian and the Moslem world, if they cannot arrive at a common accord that the communication between the two seas, so full of benefit to

mankind, shall never be blocked under any pretext of belligerent right.

One proposal that has been made is that the Canal should be invested by a common accord of the Powers with the maritime *status* of a natural strait between two seas. Such a proposal, however, would go too far in time of peace, as a natural strait of the sea is open to the free navigation of all vessels without payment of transit dues. There may be exceptions, however, as in the case of the Sound dues recently abolished by an European concert, but those dues rested on ancient custom, in which the European Powers had from time immemorial acquiesced. On the other hand, the proposal would not go far enough in time of war, as although all acts of warfare would, under the Common Law of Nations be forbidden to the vessels of other nations within the limits of a territorial sea of the Porte, as long as the Porte itself should be at peace, the prohibition would cease as soon as the Porte should be at war. What seems to be required is some Diplomatic declaration on the part of the European Powers of a self-denying character, which, without complicating the question by any fiction of Public Law as to the maritime *status* of the Canal, would operate to secure to the vessels of all nations not engaged in war with the Porte a peaceful passage through the waters of the Canal. The principle involved in a self-denying Act of this kind has already found favour with the European Powers who have been more especially mixed up during the present century with the affairs of the Levant, and the recent conference at Constantinople on Egyptian affairs inaugurated its first session by the signature of a self-denying Protocol* after the model of that which the Powers adopted at the Congress of Berlin, and which was itself framed after the model of a

* *Parliamentary Papers, Egypt*, No. 11 (1882), p. 86. *Italian Green Book*, p. 231. *Blue Book*, No. 17 (1882), p. 72.

Protocol inserted in the Triple Treaty of London of July 6, 1827, when Russia, France, and Great Britain entered into an alliance to bring about the independence of Greece.

The secret history of the origin of this Protocol has lately been disclosed by the publication of a despatch from the Austrian Ambassador at St. Petersburg to the late Prince Metternich, recounting a conversation with the Emperor Nicholas which took place at St. Petersburg in 1828.* The Duke of Wellington had been despatched by Mr. Canning in 1826, upon the accession of the Emperor Nicholas, on a special mission to St. Petersburg, with a view to bring about an understanding with Russia as to the means of putting an end to the general disorder of the East, consequent on the powerlessness of the Porte † to put down the Greek insurrection. The Emperor Nicholas suspected England of an interested motive, and it was in pursuance of this idea that he proposed to the Duke the drawing up of a self-denying Protocol. The Duke took a few days to reflect, and finally accepted the Emperor's proposal. The formulation of an article seems to have been undertaken in the first place by Prince Lieven and Count Nesselrode, while the Duke made some slight amendments in it, after which it received the signatures of the Duke and of both the Russian diplomatists. The article as agreed to on this occasion was adopted in almost identical terms by the Conference at Constantinople, and received the signatures of the representatives of Germany, Austro-Hungary, France, Great Britain, Italy and Russia on 23rd July, 1882. The Porte was not a party to this Protocol, as it had not at at that time consented to participate in the Conference, and its accession to the Protocol was unnecessary. The Protocol was thus worded :—

* *Memoirs of Prince Metternich.* Vol. IV., p. 487.

† *Despatches, Correspondence, and Memoranda of F.M. Arthur, Duke of Wellington.* New Series. Vol. IV., p. 57. J. Murray. London. 1871.

"The Governments represented by the undersigned, undertake (in any arrangement which may be made in consequence of their concerted action for the settlement of the affairs of Egypt), not to seek any territorial advantage, nor the concession of any exclusive privilege, nor any commercial advantage for their subjects, which those of any other nation shall not be equally able to obtain."* The words within the parenthesis were added at the suggestion of France, and served to limit the operation of the Protocol to the matters with which the Conference was specially concerned.

It is in the spirit of the Protocol that we think the question of the freedom of the navigation of the Suez Canal at all times should be approached, and a recent despatch from the Italian Minister of Foreign Affairs to the Italian Ambassador at London, may be taken to intimate that Italy would be disposed to regard with favour a proposal to assure at all times the free navigation of the Canal by the collective action of the European Powers.† An International Act of a self-denying character on the part of the Christian Powers alone, would meet all the requirements of the case as regards the assurance of a free passage to neutral vessels, if any of the Signatory Powers should be at war with the Ottoman Porte or its vassal State. The authority of the Suzerain Power need not be invoked to give validity to a voluntary arrangement amongst the Christian Powers, that they will not enforce their belligerent rights within the waters of the Canal, against vessels under the flag of any of the Signatory Powers. But the Porte, which was formally admitted in 1856 into the European Concert of Public Law ought, in its own interest, to welcome such an Act, and should be the

* *Parliamentary Papers, Egypt*, No. II. (1882), p. 86. *Italian Green Book* (Protocollo di Disinteresse), p. 231.

† *Italian Green Book*, p. 279. Despatch of M. Mancini, dated Rome, 28th June, 1882.

first to affix its signature to it, as the supreme Territorial Power.

In suggesting an International Act of a self-denying character, we do not mean to suggest that its scope should be limited simply to non-interference with the navigation of neutral vessels within the Canal, at times when the Porte can no longer afford them the protection of a neutral territory. The *usufruct* of the Canal and its dependencies has been granted to a Foreign Company for a certain number of years in the interest of the commerce of the world, and upon the faith of that grant the Company has created the Canal at its own expense, and maintains it by dues levied on passing vessels. It would be a *desideratum* in the same interest in which the Canal was constructed, that the European States should concert with one another to avoid inflicting unnecessary damage upon the works of the Universal Company, and if the necessities of war should entail damage upon the works of the Company, they should agree that the party inflicting the damage should repair it as promptly as possible. Such was the recommendation of the Institute of International Law, at its Session in Brussels in 1879, and such a recommendation needs only, we believe, to be announced, for it to win the suffrages of the civilised world. The oracular warning of the Priests of Memphis has been fulfilled, that the Ruler of Egypt who should open out a water communication between the two seas, would labour for the benefit of the Foreigner. Let the Foreigner, in requital for that benefit, abstain as far as possible from injuring the works of the Canal, and if damage to them should be unavoidable from the exceptional necessities of war, let the return of Peace witness their restoration at the hands of the Power which has caused the damage.

TRAVERS TWISS.

The Temple, 13th January, 1883.

II.—THE LATE PROFESSOR TASWELL-LANGMEAD.

MORE than twenty years have passed since the friendship, which ultimately ripened into our joint conduct of the *Law Magazine and Review*, was formed between myself and my valued colleague, in those happy old undergraduate days that never fade from the memory of any University man.

It is impossible to think of those days without calling to mind some who were friends of us both, and whose early promise of a brilliant career was cut short almost at its threshold. And among these, more particularly, Lockhart of University, my very dear friend, "*consummatus in brevi, explevit tempora multa.*"

Of Taswell-Langmead's own career, indeed, it may be said without exaggeration that it was really only just commencing. For although his Oxford days brought him much University distinction, those honours, which he always wore so unobtrusively, seemed for a long while destined to be of no practical avail to him in the world outside our *Alma Mater*. And it was, in the end, to the principal work of his life, his *English Constitutional History from the Teutonic Conquest to the Present Time* (London: Stevens and Haynes), of which the first edition, published in 1875, was soon exhausted, that Langmead's recognition as a master of his special subject would seem most properly to be ascribed. The bent of Langmead's mind towards Constitutional studies was shown during his Oxford days, when he obtained the Stanhope Prize in 1866, as author of an Essay on the Reign of Richard II. Of this Essay, indeed, he was able to incorporate some portions in his subsequent History,

and he was not one who would cite or incorporate any previous writings of his own without being satisfied of their aptness to the purpose in view.

In the old School of Jurisprudence and Modern History, as it existed in our day, Taswell-Langmead found the natural goal of his efforts as regards the Schools, and the just expectations of his friends were amply fulfilled, for he took his B.A. degree in the Michaelmas term of 1866, with a First Class in that School. I think that few of those who went up for Law and History Honours in those days failed to appreciate the characteristic excellences of the combination of studies which was then set before us. Changes many have come to pass in the Final Schools as well as in others. And some of these changes, doubtless, have advantages which we who have left the University precincts are perhaps not so readily capable of perceiving as those who are still on the spot. But I have always felt a deep and lasting gratitude to the old School in which Langmead and I took our degrees, because I have felt, and still feel, that it taught me much which I should otherwise, in all probability, never have learned at Oxford. And all that one learns in undergraduate days seems to become part and parcel of oneself as no other learning, I think, ever does.

In 1867 Langmead added yet another academical distinction to his already full list of honours by obtaining the Vinerian Scholarship in Law within the University. In pursuance of the terms of that Scholarship, he presented himself for examination for the degree of B.C.L., which he took in 1869. But, singularly enough, he never took his Master's degree, though he was contemplating proceeding to the Doctorate in the Faculty of Law, and had even, from time to time, studied a special subject in Roman Law for a Thesis. His clear grasp of that wonderful Legal system, which must have appealed strongly to

his own singularly lucid and eminently administrative mind, cannot but cause regret that Langmead's Doctoral Thesis should never have gone the length, so far as I am aware, of even a rough draft.

Although so conversant with Roman and English Law, the disinclination which Langmead always felt for rapid writing prevented his enriching the pages of this *Review* to the extent which might have been expected. He wrote seldom, but when he did write it was in the nature of a Treatise rather than of an ordinary article, and on subjects which were akin to some of his special studies. I do not find that I can point to more than two articles from Langmead's pen during the seven years that we were associated in the conduct of this *Review*. In May, 1876, he gave us the benefit of an elaborate discussion of an interesting Constitutional question, which is still a question of the day, viz., the "Representative Peerage of Scotland and Ireland." And in May, 1878, he wrote an exhaustive article on "Parish Registers," which was recently reprinted for private circulation, with a Preface by his old friend, Mr. W. C. Borlase, M.P., on the introduction of his Parish Registers Preservation Bill, which Langmead drafted for him.

But although my colleague wrote little, his counsel and his guidance never failed this *Review* until strength itself began to fail him.

It was only a very little while before the appearance of the fatal malady which struck him down so rapidly, that the Council of University College, London, bestowed upon Taswell-Langmead what was to be the crowning distinction of his life, and the final recognition of what may in truth be called his life's work. With so congenial a career before him as that of a Professor of Constitutional Law and History, Langmead's future seemed very bright. While it was at its brightest the shadow was falling, though we knew it not. Some there will be whose memory of him will

centre round that portion alone of Langmead's life when the news of his election went the round of the daily press, and made him, against his will, a person of distinction among the guests assembled at the Hotel de Hollande at Kreutznach, in the early summer of 1882. Those who were among that number, whether English, Scottish, or German, and who may read these pages, will, I feel sure, not have forgotten the English Professor who was their fellow-sojourner for two months of the Bath season of last year, and whose short-lived career was at an end before Christmas. It is useless to speculate on what Taswell-Langmead might have accomplished had longer life been granted to him. That he would have thrown himself with interest and zeal into the work of his Chair at University College cannot be doubted. And he would probably have added to his already well established reputation as an author on Constitutional Law and History by fresh substantive works, as well as by the revision of his first book. How thorough that revision itself needed to be to satisfy his conscientiousness, may be estimated by any who compare the two editions which Langmead lived to see through the press. But I feel sure that he would have given us more than this had he remained longer among us. His keen interest in the antiquarian side of legal studies is evidenced by his repeated attempts to urge on Government the duty of the preservation of the Parish Registers of England as National Monuments. Commencing with *Notes and Queries*, proceeding with the publication of a Pamphlet on his own responsibility, and concluding with the article in the *Law Magazine and Review* of May, 1878, and the drafting of Mr. Borlase's Bill, Taswell-Langmead's name should ever be honourably associated with the proposal for the National Guardianship of these National Archives.

Descended paternally from an old West of England stock, now, I believe, almost entirely extinct in his

own rank of life, though still to be met with under varying orthographies in Devon and Cornwall, Langmead's interest in genealogical studies was always keen. He ever carried with him, from one set of Chambers to another, a fragment of the old Manor House of Limington, in Somersetshire, the seat of his forefathers. This manor, singularly enough, formed the subject of an article in the *Antiquary* (London: Elliot Stock) for November last, while Langmead was yet alive, by the Rev. Henry Hayman, D.D., late Head Master of Rugby, who cites Taswell-Langmead's own account of the Parish and Manor in the *Church of England Magazine* for Dec. 3, 1864, and also a pedigree of his family in *Miscellanea Genealogica et Heraldica* (London: Mitchell and Hughes), for July, 1872, likewise, I believe, contributed by Langmead. His maternal descent, and his representation of a branch of the Taswell family, was eventually marked by Langmead's assumption of that surname in addition to his patronymic. The name of Taswell has an interest not confined to Europe, for it is commemorated in that Virginia of which Queen Elizabeth was described as Empress, in a County which enshrines the memory of Governor Tazewell, and is to this day known as Tazewell County. Some of Langmead's own near relatives bore the name under the form of Tanswell, in which form it may be connected with Literature through the *History and Antiquities of the Parish of Lambeth*, written by Langmead's uncle, the late Mr. John Tanswell. There appear to have been three principal variations of orthography, Tanswell, Tazewell and Taswell, of which my friend perpetuated the last and, I think, the most euphonious. I have no doubt that our kin beyond sea, who are so eager to proclaim their links with the old country they love so well, will take care to note the link which connected my colleague, Taswell-Langmead, with the Old Dominion of Virginia. It was not without a lively feeling on our own side of this genea-

logical affinity that we responded editorially to the proposal which reached us, some time after assuming the conduct of this *Review*, to exchange with the *Virginia Law Journal*. We have ever since continued in friendly relations with our esteemed Virginian contemporary, and have drawn attention from time to time to Virginian Judgments. I do not doubt that the memory of Taswell-Langmead will be duly honoured in Virginia.

How imperfect this brief sketch of my valued friend and colleague must needs be, none can feel more keenly than myself. But his character was so retiring, his diffidence so persistent, that he never really put forth all his power, and he has consequently left us with less materials than we ought to have had for raising a cairn to his memory. Nevertheless, I hope that those who may read these pages will carry away some feeling of the loss, which I have endeavoured to show is a loss, not only to his personal friends, but also to the ranks of the English Bar, and of English Historians, in the taking from among us of my dear old friend, Taswell-Langmead. *Sit ei terra levis!*

C. H. E. CARMICHAEL.

III.—MR. WENDELL HOLMES ON THE COMMON LAW.*

THE *Mayflower* carried across the seas something more than a precious cargo of human souls: the ship was freighted also with the rights attaching to those human souls, incorporeal, mighty, and undefined rights collectively known as the Common Law of England. From that time down to 1776, this body of laws had two homes, one on either

* Eleven Lectures on the Common Law delivered at the Lowell Institute in Boston, U.S. By O. W. Holmes, Jun. Boston: Little, Brown & Co. 1881.

side of the Atlantic; then the cord of unity was severed and the growth continued independently, each portion however recognising the power of the other. With the later additions to this common foundation of the laws of the two countries Mr. Holmes does not deal, and we think advisedly; his eleven lectures are only concerned with the elements of which the law is composed and are devoted to the following subjects:—Early forms of Liability: The Criminal Law: Torts: Trespass and Negligence: Fraud, Malice and Intent: The Theory of Torts: The Bailee at Common Law: Possession and Ownership. Contract: i. History: ii. Elements: iii. Void and Voidable. Successions: i. After death: ii. *Inter vivos*. The sequence of the lectures shows at once the author's aim: to treat the subject in what must have been the historical stages of its growth; starting with what evidently must have been the events to which first notions and earliest forms of law attached, to trace how other events happening, first notions and early forms had to be expanded and fitted to meet the new occasion for them; then as the relations between men multiplied and became infinitely varying, to show how the first notion, by many expansions, developed a multitude of kindred notions springing from the common stock, until the mass of them became a body of law sufficient, or presumably sufficient, to deal with occurrences of all sorts; to show how the early form, by different applications of it, engendered kindred forms, till collectively they grew up into a procedure sufficient, or presumably sufficient, to invoke any portion of the body of law as occasion demanded: and finally how a Law thus came to be developed, fitted to deal with all emergencies, the Law which has in later centuries been called the Common Law.

But the study of the growth and administration of the Common Law at once branches out into two distinct enquiries: first, the discovery and application of the

existing Common Law to a set of events resembling, but not identical with events that have occurred before; secondly, the extension of the existing Common Law to an entirely new set of events. And first, as to the discovery and application of existing Law. From the manner in which it has been called into being, it is evident that the principles of which it is composed are in reality decisions of early Courts handed down by or recorded in the reports in the Year Books: therefore, in applying the law to any set of circumstances, the first step is to discover whether it is on "all fours" with any other set before adjudicated upon: if, as sometimes happens, the search is successful, the new decision follows the old precedent and the work of the Court is easy: but if the search is unsuccessful, it becomes necessary to ascertain to what group the new set of circumstances is more nearly allied. To this most important step Mr. Holmes directs our attention on more than one occasion. The group to which the set of circumstances before the Court more nearly approaches, consists in reality of the infinite permutations and combinations of a given set; under one arrangement the law has decided that no blameworthiness attaches to the defendant; under another arrangement that blameworthiness does attach; these two arrangements would very frequently appear to be widely different in themselves and the distinction between them clear when stated broadly. "But as new cases cluster round the opposite poles and begin to approach each other, this distinction becomes more difficult to trace; the determinations are made one way or the other on a very slight preponderance of feeling, rather than of articulate reason; and at last a mathematical line is arrived at by the contact of contrary decisions, which is so far arbitrary that it might equally well have been drawn a little farther to the one side or to the other, but which must have been drawn somewhere in the neighbourhood where it falls." The illustra-

tions given by Mr. Holmes are apt, and from the study of them he defines very clearly the functions of Judge and Jury. The regions belonging solely to the Judge are those surrounding the opposite poles, which it should be observed are continually changing and presumably also continually approaching to one another; the region of the Jury is the debateable land between the penumbra on either side of the line of partition.

The third stage introduces much graver difficulties; and we should like to have seen these difficulties treated by our author with his characteristic vigour and power of subtle analysis. The process, or rather the manner in which the process is usually worked out, brings into clear light the inherent defects which lie not so much in the Common Law itself as in the administration of it; that is to say, in its growth, or the manner in which its principles are extended or fresh principles added to it. The set of circumstances on which the Court is called upon to adjudicate may neither be on "all fours" with any other set already adjudicated upon, nor in any way resemble any group so as to be included within it as a variety up to this time unconsidered. The Court is then driven from a declaration of the Common Law to a declaration of Common Sense. This amounts to a declaration of what, in its opinion, is the Common Sense view of the case before it, and necessitates the somewhat arbitrary further declaration that such view, being the one taken by Common Sense, is the Common Law applicable to the occasion.

That Law should depend on anything so vague as Common Sense which, after all, is nothing but a mere meaningless expression, the interpretation of which must of necessity vary with the powers and capacity of every man who sits upon the judicial bench, is much to be regretted; but is a blot which cannot be eradicated from any system whose foundation is a Common Law. The Common Sense

view of a case would doubtless be made to include the moral view of the case; this must vary according to the piety of the Judge and would precipitate us into a sea of troubles; arguments would become a series of commonplaces as to moral obligations, obligations imposed by opinion, and obligations imposed by God; and thus, as Austin pointed out with much emphasis while criticising one of Lord Mansfield's moral decisions, "moral obligations being anything we choose to call so, for the precepts of positive morality are infinitely varying and the will of God, whether indicated by utility or by a moral sense, is equally matter of dispute, a decision which assumes that the judge is to enforce morality, enables the judge to enforce just whatever he pleases." Let us take an example. It is [said to be] the Common Law that there is no Copyright in immoral, irreligious, seditious or libellous books; if it is the Common Law, the principle rests on one decision alone, *Stockdale v. Onwhyn* (5 B. & C., 173) in which Chief Justice Abbott declared, Bailey, Holroyd and Littledale, JJ., assenting, that the judgment of the Court proceeded upon the plainest principles of Common Law, founded as it is, where there are no authorities, upon common sense and justice; and that it would be a disgrace to the Common Law could a doubt be entertained upon the subject. And the principle received a yet more remarkable extension in *Wright v. Tallis* (9 Jur. 946) where it was held that no Copyright could exist in a work fraudulently published as the work of another person than the real author, because it was a species of obtaining money by false pretences. Mr. Holmes, although not specially noticing this incorporation of Common Sense into Common Law, and the consequent excrescences disfiguring the system, treats at some length, and in an able manner, another principle supposed to lie at the root of the Law; this is the ideal standard of general and special behaviour now well understood in many cases,

but in doubtful cases to be determined by twelve ordinary men drawn haphazard from the community without reference to their capabilities for the task, the behaviour which any one member of that community is required to act up to.

We come now to the second branch of the inquiry, the extension of the Common Law existing at any epoch to an entirely new set of events. The step we have just noticed is of course an illustration of this, but the subject covers a much wider field of observation and introduces the other great source of Law, the statutes passed by the governing assembly of the State : it is in reality the growth of Law to meet the new necessities of successive eras in Civilisation. And here it is a relief to turn from our own commentaries, ponderous in form and sense, to the charming pages and accurate, though perhaps somewhat too minutely analytical and occasionally too diffusely historical manner, of Mr. Oliver Wendell Holmes, junior, the worthy son of a most worthy father.

As we have said, the plan adopted is to find by the light of history the germ of Law as existing in the earliest social condition of mankind, and to trace its aftergrowth and development to meet the changes in these conditions which have resulted from the progress of civilisation; this germ is evidently to be discovered in the earliest form of liability; in Law stepping in to check the licentious growth of vengeance, and to grant in lieu thereof and in moderation the redress demanded and exacted by that commonest of human passions—the universal passion common to man and beast. Mr. Holmes points out, and we believe he is the first who has done so, that vengeance for an injury received was not only directed against the person, but also against the thing causing the injury, and very frequently against that thing alone. From the example in Jewish law relating to death caused by the goring of an ox, contained in Exodus xxi., 28, where it was provided that the ox should be stoned

and not eaten, and the owner be quit, our author turns to the system of vengeance against the thing injuring sanctioned by the Greeks, under which, as late as the second century after Christ, men "still sat in judgment on inanimate things in the Prytaneum;" thence to find in the Roman law similar principles applied to the *noxæ deditio* and consequent results; thence to notice the surrender of animals sanctioned by the early German law, relating in passing how disgrace fell on a family among the rude Kukis of Southern Asia, if a tiger had killed or a tree had fallen on a member of it, until the tiger were slain and eaten or until the tree were cut down and scattered in chips. Pursuing his research he finds vestiges of the same principle in the Kentish law of the seventh century, in the old Scotch law, in the escheat and deodand of English law, in an interesting decision of an English judge in 1333, and as late as 1676 still a trace in a decision of Twisden, J., until at length the inquiry arrives at the maritime lien of modern law: this Mr. Holmes considers, and we think rightly, to be a survival of that old legal recognition of the earliest method of obtaining redress—vengeance. The theory is borne out in a remarkable manner by the fact that many of the peculiarities of the law of maritime lien fit in with provisions of the ancient law of vengeance against the thing. We confess, however, that we are somewhat surprised to find that the whole doctrine of lien is not included in this original theory, and not merely the one form of it relating to ships in their personal capacity. Surely, the trace of vengeance against an inanimate object which has become the cause of damage sustained is very apparent in the rule of the law of lien as given by Blackstone:—"Every person to whom a chattel has been delivered for the purpose of bestowing his labour upon it has a lien thereon, and may withhold it from the owner until the price of that labour is paid."

Springing, too, from vengeance is the Criminal Law; and our author points out that redress is as important a fundamental principle in this branch of law as the one more commonly attributed to it—prevention. One lecture is certainly insufficient for the subtle analysis required for, and which we think should have been given to the consideration of the many intricate problems arising out of the Criminal Law. Two well-known examples must suffice:—A workman on a house-top at mid-day knows that the space below him is a street in a great city; he throws down a heavy beam into the street, and causes the death of a passer-by; he is guilty of murder. But if the workman has reasonable cause to believe that the space below is a private yard from which every one is excluded, and which is used as a rubbish-heap, his act is not blameworthy, and the homicide, it is said, would be held to have been by misadventure. It will be noticed that the circumstances reducing the killing to excusable homicide are here very much narrowed down from those given in Blackstone, who says that if the timber be thrown down in a country village where few passengers are, and the workman call out to all people to have a care, it is misadventure only; but if it be in a populous town where people are continually passing, it is manslaughter, though he gives loud warning; and murder, if he knows of their passing and yet gives no warning at all. It is much to be regretted that this cumbersome example, so long supposed to be a correct enunciation of the Common Law (although we believe there has never been a judicial decision embodying it), should have been handed down in a scientific book such as that of Mr. Holmes. In Blackstone's language almost every word would require the nicest discrimination before applying it. Where is the line to be drawn between a village and a populous town? The commentator instances London as a populous town; smaller towns would possibly therefore be included under "villages;"

and we can imagine the marginal note of an antique report,—"*sed quære* as to suburbs of a populous town." Again, what infinite argument the words "loud warning" would involve. With Mr. Holmes the village has become a yard, and a yard further qualified thus, "from which every one is excluded: which is used as a rubbish-heap." These qualifications do very possibly reduce the definition to its lowest terms, but we can imagine cases coming even within these terms and the killing still to be murder. The fact is, illustrations, more especially in Criminal Law, are practically useless unless based on precedent; they even then require most careful application. It is perhaps for this reason that, with the exception of the decisions of the Court of Crown Cases Reserved, there are no official criminal reports; each prisoner is in effect judged on the merits or demerits of his own case. We are the more surprised at finding the superannuated workman and his beam figuring in Mr. Holmes's brilliant pages, inasmuch as he is careful to insist on the true test in such cases, the true distinction between murder and excusable homicide:—"that the party causing the death neither did foresee, nor could with proper care have foreseen," that harm would accrue from his act.

The second instance, taken from Foster's Crown Law—the man who shoots at poultry, and by accident kills another, murder being dependent upon the felonious intent to steal the poultry—also required further analysis. We presume, however, that with the promised Criminal Code, this illustration will vanish from the pages of treatises on the Common Law.

Passing from the Criminal Law we come to Torts: Trespass and Negligence, Fraud, Malice and Intent follow naturally in order; and in the two Lectures devoted to the general Theory of Torts the most difficult question, liability for unintentional harm—evidently in the development of the Law the next step to liability for intentional harm—

and the two theories advanced in support of the principles are dealt with in a masterly manner. We then come to the position of the bailee at Common Law, and consequent upon this the much discussed nature of Possession, which is so full of perplexity to the minds of German jurists.

The three following lectures are devoted to Contract, the first of which is purely historical.

Contract, still untouched by Statute Law, is the most remarkable instance of the habit of growth which has become the very nature of the Common Law system. The forms of Contract, the methods of entering into them, the subject-matter of them, and the parties to them are infinitely varying; but principles of law are applied only to those examples which come before the Courts; thus it often happens that an elaborate set of circumstances may have been adjudicated upon, while the law applicable to the corresponding simple set may never have been definitely decided; the law as to this set, when required, can only be arrived at by eliminating extraneous matter; the objection to which method is that this elimination very frequently carries away with it the whole of the decision. Thus the all important Law of Contract, like all other branches of the Common Law, is still far from, though ever approaching, perfection, the only means of attaining that consummation being in the hands of suitors and their legal advisers. From this it naturally follows that the growths of the two systems of Common Law, English and American, are not co-extensive; a simple point may be decided in one country, and await its decision in the other for many years: but when both events have happened, the similarity of the decisions affords an excellent test of the "Common Sense" involved in them, when that has been rhetorically appealed to by the judges. But the fact of there being two systems sprung from a common origin emphasises the necessity of the Courts of one country keeping *au courant* with the

decisions pronounced in the other, and of research on the part of writers of text-books in bringing such decisions to light. For this further reason we accord a welcome to Mr. Holmes's work, and trust that, if only for the sake of the chapters on Contract, it may find a place in law libraries by the side of Addison, Chitty, Pollock and Anson.

Two lectures on Successions after death and *inter vivos* close the series, which well deserves the praise that it forms one of the most valuable additions to the study of Law which has of late years passed through our hands, our delay in noticing it we trust not having been taken by the learned author as any mark of want of appreciation on our part.

Here we must necessarily close our review of this most excellent book; but the field of observation suggested above as the second and most important branch of the subject—the extension of the Common Law existing at any epoch to an entirely new set of events—is by no means exhausted. What we have said above on the growth of the law of Contract is applicable to the whole body of the Law. It is ever growing, unless that growth be checked by the consolidation of principles already enunciated on any subject into a Code or Statute. We think however, that it is necessary to qualify Mr. Holmes' view of this growth of the Law: that while new principles are adopted from life at one end the old historical principles at the other are retained only until they are absorbed or sloughed off. The sloughing process does not in reality exist. We may be confident that if we were now living in an age ignorant of contracts, and that to-morrow the first contract were entered into, and in course of time came to be adjudicated upon by our Courts, the decision of those Courts would be in principle the same as in the earliest recorded instance of a decision upon a similar set of circumstances. The principles are continuing and lasting, and, when the same

set of circumstances requires adjudication, are still applicable; it is only when a new set of circumstances comes to be considered that new principles have to be developed, and it is in this development alone that the exigencies of the times, and public policy, have to be considered. Reverting for one moment to Contracts: a verbal contract is governed by the same rules that have always applied to it: a contract by post has required the introduction of other principles, in the formation of which public policy has taken its part.

Entirely new sets of circumstances arising in modern times, it is usual at once, or so soon as they acquire importance, to provide statutes gathering up the few decisions of the Courts that have already been given upon them, and embodying such existing principles of Common Law as may seem to the Legislature applicable and necessary, the value of the statutes depending largely upon the foresight of the Law officers of the Government. Company Law affords a good example of this method. But here the voice of the community is heard, and legal experience and foresight is largely supplemented by the knowledge of practical men; and, as Mr. Holmes points out, these practical men will very often insist upon and carry through what seems to them convenient, without troubling themselves very much what principles are encountered by their legislation. Once passed into the region of statutory law, the Courts are compelled to mould their decisions upon the new provisions, not unfrequently, however, subject to protest and criticism.

There remains only one point, the wisdom of Codification of the Common Law in some or all of its branches. The ability displayed in the recent Bills of Exchange Act, and the appointment of a Grand Committee to deal solely with Law Bills, induce us to hope that the experiment may be repeated.

We have exceeded the limits we had originally set

to ourselves, and yet we have left unnoticed many interesting theories advanced by Mr. Holmes which we would willingly have touched upon. We must console ourselves with the hope that we shall meet again in the field of Legal Literature our able guide and instructive companion through the mazes of the Common Law, Oliver Wendell Holmes, Junior.

F. T. PIGGOTT.

IV.—THE LATE RIGHT HON. SIR JOSEPH NAPIER.

THE recent death of Sir Joseph Napier, Lord Chancellor of Ireland in 1858, severs almost the last link in Irish politics between the present and the preceding generation. Born in 1804, he out-lived not only his contemporaries, like Lord Eglinton, Chief Justice Whiteside, Baron Greene, Lord Chancellor Brewster and others, but most of his juniors engaged in Irish public life before 1858, such as Lord Mayo and Mr. Justice Keogh. He had already won a great position in Parliament before Lord Cairns or Mr. Whiteside had found a seat there, before Lord Mayo had yet made himself known by his industry, his large knowledge and calm judgment. At the general election of September 1847, Mr. Napier was an unsuccessful candidate for the University of Dublin, and was not able to take part in the winter labours of the fifteenth British Parliament; but within a few months, on the retirement of Sir Frederick Shaw, he was returned unopposed for this constituency, a seat for which is naturally regarded in Ireland as one of the highest objects of ambition. His public life thus practically began with that of the last Whig Parliament before the Crimean War, the Parliament in which Lord Selborne and Chief Justice Cockburn first found seats.

Before the session of 1848 was over he had taken a high place as a debater. The House of Commons of that day boasted such speakers as Sir James Graham, Mr. Roebuck, Mr. Milner Gibson, and Chief Justice Cockburn, not to speak of still more famous names, whilst among the law reformers, in whose labours Mr. Napier bore so large a part, were the late Lord Romilly, Lord Hatherley, and Lord Selborne. It was in generous rivalry with such men as these that Mr. Napier took his share in the great series of law reforms, which, under the guidance of Lord Cottenham, Lord Campbell, and Lord St. Leonards were carried between 1846 and 1858.

He continued an active member of the House of Commons during the whole of the Parliament elected in 1852, and during the earlier years of that which was elected on the question of the Chinese War in 1857, when Lord Palmerston routed the Manchester party with a completeness which presaged that statesman's coming supremacy, but which did not in the immediate future save him from the catastrophe of 1858. His defeat in February of that year brought into being the second Derby Administration, and Mr. Napier was called on to assume the responsibility of the Irish Chancellorship.

There is perhaps hardly any portion of the history of this century about which the men of our time know so little as that between the fall of Peel in 1846, and the long administration of Lord Palmerston from 1859 to 1865. A general survey of this latter period is all we care for as a prelude to the more stirring times of Beaconsfield and Gladstone. Every school-boy knows something about the Crimean War, and the Indian Mutiny, and perhaps is aware that there was a Chinese War, and some excitement about the relations between our country and the revived French Empire. But as regards internal affairs, this period is as little known as the administration of Walpole, though very momentous

events were, during this time, in process of development. In England, the great economic changes, of which the Corn Law Legislation was rather the outcome than the embodiment, were gradually producing their full effect in the political advancement of the middle class at the expense of the Whig nobility. Aristocratic enthusiasts who cherished Constitutional Liberalism as a special possession of their order, the Russells, the Greys, the Lansdownes, were being eclipsed by passionate class orators like the Cobdens and the Brights. Not strictly related to politics, but still surging round political questions on all sides were the tides of religious propagandism, the passionate searching after subtle old things of the Catholic movement, the vehement self-assertion and militant philanthrophy of the Dissenter, the absorbed ecstacy of the Evangelical enthusiast. In Ireland, if the intellectual changes were fewer, the material were much more important.

Irish politics seem destined to occupy no small share of the historian's time during the whole of this century. For the first thirty years, the constitution of Ministries depended almost as much on the Catholic claims as on the question of Reform. For the subsequent fifty years, the economic condition of Ireland has absorbed even still more attention. The part taken by Sir Joseph Napier in the discussion of Irish Land Legislation exposed him early to that sort of attack which is unfortunately common in Ireland among all parties, wherever a public man ventures to reason upon any question, and to seek a practical conclusion instead of gratifying his hearers by vehement declamation. It is impossible to go back to the history of the Land Bills which Sir Joseph Napier introduced as Attorney-General for Ireland in 1853, without being struck by the ability, prescience, and patience of this eminent man, without feeling a pang of regret, that so much wisdom and so much charity were unavailing to save his country from many subsequent years of misery.

Sir Joseph Napier received his school education at the most celebrated Intermediate School which Ireland possessed in the early part of this century, the Belfast Academical Institution. Most of the teachers were Presbyterian, but the pupils were of all denominations, among them another Irish Chancellor, Lord O'Hagan, and some of the last generation of Irish Roman Catholic ecclesiastics. There are very few names connected with the North of Ireland in Law, Letters, Divinity, Medicine, or Politics during the first half of this century that we cannot connect with this remarkable school. From thence young Napier proceeded, in 1820, to the University of Dublin, where he soon distinguished himself in Mathematics.

In 1825 he graduated B.A., taking honours in classics, and after making some study of law in London was called to the Irish Bar in 1825. The old distinction between the Common Law and Equity Bars has always been less marked in Ireland than in this country, and although his high intellectual training, his refined ratiocinative order of mind would have pointed him out more for practice in Courts of Equity than for the rougher work of squabbling for verdicts, he followed the ordinary course of the Irish Junior Bar, and selected a Circuit, the North East, the same which has, in our times, given two other occupants to the Irish Chancellorship, Lord O'Hagan, and the present Lord Chancellor Law. He soon attained a large practice on Circuit, and in the Courts at Dublin his argument on an appeal to the House of Lords in the case of *The Queen* v. *Gray* established his position, and in the great case of *The Queen* v. *O'Connell*, in 1843, he was one of the junior Counsel on whose assistance Mr. O'Connell, who was no poor judge of men, mainly relied. The Crown had also determined to retain Mr. Napier, and their messenger arrived before that of the Traverser. In the following year, 1844, he became a Queen's Counsel, and in this higher grade of his profession the fortune which had attended him

hitherto, the qualities of care, earnest attention to detail, and keen intellectual power, were still more conspicuous. The Irish Bar at this time did not boast such names as those which distinguished it as orators and statesmen at the beginning of the century. The Fitzgibbons, the Currans, the Plunkets, and the Bushes had passed away or been called to judicial office, but they were succeeded by men who, if their abilities were less brilliant, were not the worse lawyers from having their minds undisturbed, at least during their earlier apprenticeship at the Bar, by the eddies of Irish politics. Pennefather, Lefroy, Perrin and Blackburne, were names to which the Bar could appeal as vindicating its strength, when they protested against the appointment of Lord St. Leonards or of Lord Campbell to the highest judicial office at Dublin. Even more remarkable were the competitors among whom young Napier had forced his way. Chief Baron Pigot was his senior by but a few years; Baron Fitzgerald, Baron Greene, Lord Justice Christian, Lord Fitzgerald were his contemporaries.

In the enjoyment of this great professional position, he naturally turned his eyes towards the higher work of Parliament and public affairs, which he had now a fair claim to share in. The Irish Conservative constituencies had been a good deal vexed in spirit over the question of the Municipal Corporations Act, and the constituency of the University of Dublin expressed great dissatisfaction with their very distinguished representative, Sir Frederick Shaw, who had represented the University for nine years, and had recently become Recorder of Dublin. Mr. Isaac Butt, who was at that time an active member of the Conservative party, induced Mr. Napier to accept a nomination from the dissentients. Sir Frederick Shaw was returned after a contest of considerable violence, and, having received the compliment of re-election, consented early in 1848

to resign his seat, when Mr. Napier was returned unopposed.

In Ireland old things were passing away, with a crash which agitated men's minds much as the earthquake at Lisbon did the self-complacent philosophers of the last century. New things had not come into being, but to discerning eyes they were visible in the future. Up to 1839 the Roman Catholics had been shut out of politics. Their subsequent affluence into the channels of public life produced much seething and uproar, but amidst the struggles of sect and class there grew deeper and deeper the complaint of helpless economic disorder. The landlords were hopelessly in debt, their estates overburdened with a pauper population, which struggled on from year to year on the brink of famine. O'Connell had a tolerably clear consciousness of what was impending, but revelled too much in his position as leader of the Catholic democracy, and endeavoured to dazzle himself and his followers by the mirage of a separate Irish Parliament. His policy had much the same result which that of Mr. Parnell seems likely to have in our own time. He was perpetually challenged to choose between the Law and his followers, who detested the Law, and only cared for his theories so far as they promised the overthrow of the Law. A hampering Government prosecution on the one hand, and the growth of the Young Ireland party on the other, were the results of this difficult position. His power was already becoming a thing of the past when the great agitator died at Genoa in 1847, shortly after the General Election. With him passed away the scheme of the Catholic democracy as a force in British politics. The Roman Catholic vote was a very important factor in the history of Mr. Gladstone's first administration, but then it was under strict Ecclesiastical discipline. The Irish vote is said to be very important now all through the British Isles, but the Ecclesiastical element in it is less than ever. The reaction,

after the last century, from the old exclusive laws against Roman Catholics enabled Mr. O'Connell for a long time to combine clergy and people into one political force, in a way which we shall probably never see again. As regards Ireland, then, gloomy and terrible as was the condition of the people, there was at least room for a new start. The Young Ireland party, however interesting personally, were of no political significance. The scheme of governing Ireland through the Roman Catholic masses, to the exclusion of all other parties, had broken down. Moreover, English opinion was thoroughly alive to the gravity of the crisis. For now nearly three years distress in Ireland had been the chief topic in Parliament and in the Queen's Speech each session. The imminence of this distress in 1846, precipitated Sir Robert Peel's adoption of the policy of the Anti-Corn Law League, and produced a complete disruption of the Conservative party. Mr. Napier was returned as a Conservative, but hardly as the follower of any particular leader. He was the highest type of the Evangelical Protestant, and one of his earliest and most remarkable speeches was his reply to Lord Palmerston on the Diplomatic Relations with Rome Act, when his earnest challenge to the Government to say what was the meaning of their scheme secured the support of Lord Selborne, whilst Mr. Gladstone accepted Mr. Napier's challenge, and supported the Bill on grounds which Lord Palmerston had carefully avoided. It was only within the next ten years that the leaders on one side or the other could be distinctly named.

Young as Mr. Napier was in politics and in years, an eminent lawyer returned at such a time to represent so important a constituency, his position required him to take a leading part in the great schemes with which Government and Parliament were engaged, first to secure relief for the people, and secondly to make some provision for the economic improvement of the country. Almost from his

first entry into the House, he was called to incessant labour on Lord Russell's Rate in Aid Act. One of the most remarkable schemes of Lord Russell's government was the series of Acts for facilitating the sale of Incumbered Estates in Ireland, and the work of revising and criticising these Acts on the part of the Opposition was mainly left to Mr. Napier. The scheme took many shapes, but its special characteristics were two—the providing a more expeditious mode of sale by means of a special Court, and the giving purchasers from this Court a guarantee of title. Few Acts of Parliament have had more remarkable results. As the Code became developed, session by session, the original restrictions on the amount of land to be sold, and the price for which it was to be sold, disappeared. At a time when Ireland was almost as forbidding a place of abode as during the days of the Land League, half counties were hurried into the market, with the result that the old proprietary were practically swept away in some two-fifths of Ireland. The object, however, which Parliament sought, the establishing a class of small substantial yeomen, was not advanced. The new purchasers were landlords like the former owners, with more money in their pockets, generally; but often without any knowledge of the people and their customs, and with very little chance of securing their sympathy. The great point on which the Government relied was the Parliamentary title, and of this Mr. Napier said, in words which subsequent Irish Land Legislation has often recalled to men's minds: "A Parliamentary title is only of value in proportion as the people have confidence in the Legislature, but I do not think the present course of legislation is calculated to give that confidence." Whatever may have been the value of this legislation as a whole, in one respect it was seriously defective. The question of protecting the tenant's improvements was absolutely ignored by the Ministry of Lord John Russell, yet it

was no new question in Parliament. The Duke of Newcastle, when Irish Secretary to Sir Robert Peel, had proposed a very large measure on the subject. Mr. Sharman Crawford, whose independence in Irish politics Mr. O'Connell resented, had found a constituency at Rochdale, and continued year after year to urge the claims of the Irish tenant farmers. A short experience of Parliamentary life convinced Mr. Napier that this was a subject urgently requiring a settlement. The Ministry of Lord John Russell lingered on session after session, owing its existence chiefly to the want of coherence of the Opposition. At length, in February, 1852, the antagonism of Lord Palmerston brought it to an end. Sir Robert Peel had died in 1850. Lord Derby and Mr. Disraeli determined that what remained of the old Conservative party should accept the responsibilities of Opposition, and attempt to form a Government. The number of the new Ministry without previous experience of office, especially in the House of Commons, was very large, and conspicuous among these new recruits was Mr. Napier. He became Attorney-General for Ireland, and was entrusted by the Cabinet with the conduct of a comprehensive scheme of Irish Land Legislation. Lord Mayo, then Lord Naas, became Irish Secretary, but his abilities had not yet had that training which professional practice and four years of hard work in the House of Commons had given Mr. Napier, and the conduct of Irish legislation was left to the member for the University of Dublin. His scheme consisted of four Bills, a Leasing Powers Bill, to encourage and facilitate the granting of leases; a Lands Improvement Bill, to help landlords to make improvements themselves, or to make arrangements with tenants who wished to improve; a Tenants' Compensation Bill; and a Landlord and Tenant Bill. The last of the series was a very laborious and masterly consolidation of the law affecting land tenure in

Ireland. It came under the general heading of law reform rather than that of practical politics.

The Leases Bill and the Landed Property Improvement Bill were important schemes towards making land more profitable to the community at large. But the measure which gave a distinct character to this proposed Code was the Tenants'. Compensation Bill. In principle, it anticipated the chief part of the Land Act of 1870. Any tenant evicted from his holding, without default on his part, was entitled to compensation for unexhausted improvements, and this principle was to apply not only to improvements made in the future but to improvements made in the past. The proposal was a startling one to the Parliamentary opinion of that day. Not only did it excite murmurs among the Conservative party, but Liberals like Sir John Young treated it as dangerous to the rights of property. The Tenant party received it with great satisfaction. Had the Bill been carried, there can be little doubt now that the value of property would have been largely increased and that Ireland would have been saved many years of wretchedness. The legislation would have come in time to remedy a great deal of the mischief which the patchy character of the Incumbered Estates Code was bringing about, and which went on unchecked for twenty years afterwards. The session was broken by a General Election, and before much progress had been made with the Bills the Government was out of office. Notwithstanding the opposition of many of his own party, Mr. Napier persevered loyally with the Bills during the session of 1853. Had the advocates of the tenants had any consistency and unity of purpose, his efforts might have been crowned with success. The election of 1852 had turned in most of the Irish Constituencies on the Ecclesiastical Titles legislation of the previous year. The Roman priesthood determined on a demonstration of their own, and although the candidates they returned called

themselves Tenant Leaguers, pledged to support Mr. Sharman Crawford, they were most of them but the retainers of the Roman Church, employed to punish Lord John Russell for the Durham letter,—the "Pope's Brass Band," as Lord Palmerston described them.

Lord Aberdeen's Ministry easily secured the alliance of this party. The Cabinet had little knowledge of Ireland, and were averse to any innovations about landed property. Party instinct was not disposed to give a Tory the credit of settling this great question. Attacked by some of his own friends, deserted by his Irish allies, Mr. Napier fought on, but in vain. It is interesting, in connection with this subject, to peruse a letter from Mr. Sharman Crawford, the devoted and consistent advocate of the Irish tenant, dated at Crawfordsburn, July 28th, 1853:—

"My dear Sir,—I do feel that I would be deficient both in courtesy and justice if I omitted to acknowledge how highly I appreciate the honourable manner in which you have conducted the Tenants' Compensation Bill,—and the kindness with which you have adopted so many of the suggested amendments. Most sincerely do I hope that your efforts on this Land question may be attended with the success they deserve, and that you may have the honour of bringing this great question of the tenant's rights to an equitable adjustment, such as may be satisfactory to all reasonable men who desire to have the landlord's and tenant's property placed in equal security. I can assure you that no one will have greater satisfaction in the full acknowledgment of your claims on the tenants of Ireland than I shall have in the expression of that feeling. I well know all the difficulties you must have to contend against in getting assent to your propositions from various parties, many of whom do not understand the question, and others whose prejudices are strong against it, and in these feelings I abstain from pressing upon you any larger extension of

the powers of the Bill. I shall only call your attention to one point," &c., &c.

Mr. Sharman Crawford's postscript adds:—"I hope you have been satisfied with my conduct regarding your Bills. My object has been to use any influence I possessed with the Tenant right interest to induce them to accept a reasonable settlement of this complex question."

When the Bills were ready for discussion in the House of Lords, Mr. Napier, writing to the late Lord Derby, urged him to give the scheme his best support. "Postponement will disturb property by keeping doubts afloat and agitation on foot. What has been proposed and left undecided and unsettled, will be made the basis of very increased demands, and whereas at present a reduced plan will be accepted favourably, and the question set at rest, so far as the reasonable class are in any way connected with the assertion of claims, if any part of the question remains avowedly unsettled, I see no prospect of social peace or quiet progress." Again, in this letter he says, "A Tenants' Compensation Bill for Ireland is, I think, a social and political necessity." Referring to the attacks on himself, he adds, "I am quite willing to bear the obloquy, misconstruction of motives and conduct, newspaper abuse, and distrust of friends whom, notwithstanding I still respect personally—if they do not, indeed, defeat what in itself may really benefit Ireland, and bring advantage to the very men by whom these Bills are more or less repudiated."

This generation, who know not only the Land Act of 1870, but the Compensation for Disturbance Bill of 1880, the Land Law Ireland Act of 1881, and the Arrears Act, 1882, will probably appreciate the language of Lord Beaconsfield, when he wrote to Sir Joseph Napier, in 1870, of this great struggle to carry a Land Code for Ireland: "It is eighteen years ago since you and I first conferred about an Irish Land Bill. It was a great thing for me then

to have such an adviser, and it would have been a wise thing if our friends had adopted the result of our labours."

Naturally, what Sir Joseph Napier felt most, was the indifference or hostility of his own political friends, but it depended on many other things besides Conservative votes, whether his Code should have a fair chance. The Tenant party were given over to personal intrigue with the new Government, and that administration regarded the rights of landed property even more jealously than the most susceptible Conservative.

Another subject on which Sir Joseph Napier was exposed to hostile criticism was that of Education. Parliament, under the influence of the late Lord Derby—then a member of Lord Grey's Ministry—founded in Ireland a system of popular education more than thirty years before any scheme equally comprehensive was attempted in England. At such a time, and in a country where denominational differences have always been so accentuated, it will be easily understood that the questions of which the echo still survives amongst ourselves, viz., to what extent the State should teach religion, or allow of conflicting religious theories being taught, what rules it should impose for the protection of different religious communities, produced intense excitement. These controversies were fought out with an earnestness and passion in proportion to the wide gulf which separated the great Catholic lower class from the upper and middle class, who were not only Protestant, but Protestants animated by a fervour and religious zeal that recalled the times of the Reformation. Just as the poor Catholic peasant welcomed the most extreme theories of priestly power, so the Irish Evangelical found in his faith not only a solace and support for his own soul, but the hope for the resurrection of his country. Directly in proportion to the generosity of each individual was the fervour of his desire to see the Bible read

in every Irish cabin. A State system of education, maintained chiefly at the cost of Protestant England, he considered his own instrument to be used for this one most precious object. The necessary conditions of the problem were overlooked in those quiet Protestant homes of the South and West where the old Huguenot spirit survived to exalt and cheer the scattered Protestant population. The masses followed the priests, and the priests were as vigilant in shutting out the Bible as their opponents were eager to introduce it. It was in vain for the sagacious Whately to point out that the mere process of efficient schooling must largely affect the power of the Papacy. Such a calculation of ultimate results seemed a trifling with Divine things. The rules of the Board of Education, limiting the hours during which the Bible might be read or referred to, and requiring the teacher to send Roman Catholics away during those hours, were regarded as a betrayal of a precious principle. There can be no doubt that Sir Joseph Napier, whom a refined and sensitive mind made peculiarly susceptible of religious emotion, shared earnestly the faith of his countrymen, and at first adopted without much question their views on this Education question. The experience of a very few years in the calmer and more practical atmosphere of English politics showed him that the conditions of the question had to be kept more fully in view. The main object for which England paid was to give the Catholic masses some schooling, and they could only be got to take it on certain terms. He endeavoured to show his friends that their real policy was to secure their own flocks a full share of the scheme. Whilst the Protestant clergy refused any compromise, their rivals were appropriating more and more of the scheme, until at length Archbishop Whately and Baron Greene had to retire from the Board. Whilst some of the landlords resented his attempt to settle the land question, the clergy were even more angry that he should think of

any compromise with the Protestant supporters of the National Board.

Much disheartened, at the end of the session of 1853, he writes thus to an old friend :—

"I presume Dr. —— had reference also to this" (the Education question), "but though a very pious, worthy man, he sometimes looks for what is impracticable, because it seems to manifest a greater love of principle. As to satisfying the restless and extreme views of some, and the selfish and fluctuating policy of others—the narrow-minded and the loose-hearted, the unbending landlord and the tricky tenant, the pious but isolated theorist, and the politic but flexible realist—it is all absurd for any man to try to please men or sets of men. The Apostle Paul denounces the attempt, and yet he values what is lovely and of good repute; that is what is to be valued according to a sound standard of enlightened opinion. I am bound to consider what is my duty, and discharge it in a liberal and generous spirit, as accountable to a higher than human Tribunal, and yet not disregarding the good opinion of men of wisdom and moderation."

In 1858, his appointment to the Irish Chancellorship enabled Sir Joseph to evince, in a series of important judgments, "that consummate ability as a lawyer" which the Bar of Ireland had long recognised, and which, as Lord Campbell had many years before reminded the House of Lords, Sir Joseph Napier combined with his pre-eminence as a Parliamentary debater. On the formation of Lord Derby's third administration in 1866, he was offered the appointment of Lord Justice of Appeal, which he declined. He accepted the honour of a baronetcy, and in 1868 was appointed a member of the Judicial Committee of the Privy Council at Whitehall. On the formation of Lord Beaconsfield's second administration, in 1874, he consented, at the Prime Minister's request, to act in the

Commission of the Great Seal, the Government being unwilling to lose the assistance in Parliament of his distinguished successor in the representation of the University of Dublin, Dr. Ball.

With the qualities and experience we have referred to, he was, until failing health compelled his retirement, an important representative of the Evangelical party in public life. He bore a large part in the labours of the Ritual and Clerical Subscription Commissions. Sir Joseph Napier resigned his office on the Privy Council in 1880, and he died at St. Leonard's-on-Sea, on the 9th December last. Those who knew him personally, will always cherish the memory of a character to whom bright intellect, a lofty sense of principle, and infinite amiability gave marvellous charm. In a very important, but melancholy period of Irish politics, his figure will remain for the student of history a pleasant relief to the dreary desolation around. A brilliant Parliamentary career never made him forgetful of duty or patriotism. No opposition daunted his energies, no prejudice checked his sympathies, no calumny soured them.

J. LOWRY WHITTLE.

V.—THE BRITISH PEERAGE, AND JURISDICTION AND PROCEDURE OF THE HOUSE OF LORDS AS TO THE PEERAGE.

THE British House of Peers is composed of all the Peers of England, all the Peers holding British Peerages, the representative Peers of the Kingdoms of Scotland and Ireland, and all who possess judicial or ecclesiastical peerages for life or during office. But in this article I have merely to treat of some of the rights and privileges of the hereditary peerage of the United Kingdoms of Great Britain

and Ireland. Although no longer enjoying the high and influential rights, privileges, and almost royal prerogatives of the ancient nobility, the British Peers of modern times have important national duties to perform, and have great power and influence in moulding the legislation and general policy of the country. Therefore the present subject is not without interest to the general reader.

During the feudal ages, the nobles exercised extensive civil and criminal jurisdiction within their own or certain defined territories; and, in Parliament, the King's great Court or Council, they decided or advised the Sovereign as to the great legal disputes and the general laws and policy of the nation. Then, the nobles were the only influential advisers of the King in his legislative capacity, and even now are the only hereditary councillors of the Sovereign, and as such have a right to demand an audience of the Sovereign to advise as to public affairs. Then, the titles and lands of the nobles were indissolubly connected together. But, when the great nobles began in England to sit in one chamber, and the representatives of the towns and of the lesser Barons in another, the rights and privileges of the House of Peers became the exclusive property of a limited class, and territorial baronies were merged into the personal honours of the Peerage. Now, the great nobles are almost, and soon will be wholly, deprived of their exclusive judicial privileges; and they have already been obliged to share their political rights with the representatives of the people, and to abandon the overwhelming pre-eminence in the State they once possessed.

That such a body as the British House of Peers, so eminent for the wisdom, civil and military capacity, oratorical power, and material wealth of its members, should be the envy of the civilised world is not strange. That some attempts should have been made to disparage the House is a sign of the democratic age in which we live. That the House

has very honourable and useful duties to perform under the British Constitution is almost universally held by all unbiased critics of our theory and practice of government.

At the very foundation of this magnificent structure of the British Peerage lies the principle that the Sovereign is the fountain of honour. Primarily, the dignities of Western Europe, and consequently of England, Scotland, and Ireland, were personal and official, and not hereditary. Their origin and progress are clearly traceable to the Roman Empire and the Frankish and German Empires. The *Comites*—companions—*Comites et Amici*—the companions and friends—and the *Duces*—the Generals—of the Roman Empire became the Counts and Dukes of the Frankish and German Emperors. According to the Constitution of the Roman Empire, the *Comites Palatini* held the highest rank in the Roman hierarchy, and assisted the Emperor in the performance of his exalted legislative, judicial, and executive functions. Thus, the Count of the Roman Empire assisted the Emperor at the Imperial Palace in the general management of the Empire, or carried on the work of government in the Emperor's name in the various provinces, departments, and districts of the Empire. Sometimes he ruled over a city and its annexed territory. In the course of time he, in several instances, became supreme ruler, and never changed his title. The highest noble titles—Prince, Duke, and Count—at once betray their Roman origin, and the lower grades of the modern British Peerage—Marquis, Earl, and Baron—are not essentially different in their nature from the highest. Marquis, Earl and Baron are merely modifications introduced by local and historical considerations. Thus, a Marquis originally had the duty of defending the marches or boundaries, and Earl and Baron are the pure Saxon equivalents of the Roman Count, and the Viscount was the delegate of the great feudal lords within their territories. The *Comites Palatini* of the Roman hierarchy

reappear in later times as the Lords Palatine in England and Ireland and as the Lords of Regality in Scotland. Further, as the Roman Count or *Dux* had usually appropriated to him certain territories which conferred upon him authority, more or less approaching to supreme, for a term of years, for life, and at a later date upon him and his heirs, so their successors in the Frankish and German Empires, and in the feudalised Kingdoms of France, England, and Scotland, had noble fiefs bestowed upon them for life, and at a later date upon them and their heirs in absolute fee.

The honorary dignity of *Dux* in the Roman Empire involved rights very much the same as those of a Count. It certainly did not necessarily imply higher powers, and the holder of the title was frequently subordinate to the *Comes* in the Administration. As defence against enemies became more and more important, the title of *Dux*, referring primarily to military command, became the more important title of the two. When the Western Empire finally succumbed to the assaults of the savage and barbarous hordes which overthrew it, the territory of the Empire fell to the conquerors, who slowly and gradually emerged out of their barbarism, and by degrees built up a system of government essentially based on military service, and who, in the course of time, formed themselves into the different kingdoms of modern Europe. This wonderful polity has sunk deep into all the Governments of the West, and has even now a potent influence in the government of the world.

The Feudal System, says Selden on Titles of Honour, has given rise to noble fiefs or tenancies, out of which the greatest part of the dignities of Europe have been derived. In conjunction with the Roman law as to municipalities, it is the fountain-head of our Imperial and local government. The essential characteristics of the Feudal System were the performance of military service by the vassal to his lord, and the duty of suit and service by the vassal in the court

of the lord. These duties were correlative to the obligation to defend the vassal in his tenancy, and to protect him in all his rights.

To suppose that the great landed possessions of the Peers of this country, or even of the Continent, were the gifts of the Sovereign as lord paramount would be a grave error. Many of the great lords of the feudal ages received no lands whatever by the gift of the King, but were content, as in England after the conquest by King William I., to become tenants in chief of the King, and, along with the King's Norman captains, to subject themselves to the obligations of feudal tenure, and thus obtain the protection, and the dignities and privileges of *comites et amici*, of the English King. Thus, the old proprietors of the soil and the followers of the Norman prince became the great territorial and military nobles of the middle ages of English history. The same course of events can be traced in Ireland after the conquest by King Henry II., and in Scotland after the union of the Scots and Picts in the eleventh century.

Before the Norman Conquest, the ancient title of dignity in England was Thane, signifying minister or servant. Very soon afterwards Earl and Baron, and subsequently Duke and Marquess were introduced. Where Bede has *Primates*, *Duces*, and *Sub-reguli*, the Saxon chroniclers have Ealdormen, who, till about the year 1020, in the reign of Canute, were the same as the *Duces*, *Principes*, and *Consules*. The title of Earl was introduced into England by the Danes, and signifies honourable, puissant, or mighty. "Ealdorman" became obsolete, and "Earl," literally meaning Senior or Senator, was substituted in its place. But "Earl," in its dignified meaning, indicates wisdom rather than age, and was given to one who governed a province or a county.

Previous to the introduction of the Feudal System into Scotland, the land tenure was essentially Celtic and Tribal.

Then, the land belonged to the various tribes or clans which occupied the country; and the Chief, as the head of the clan, divided it amongst the different members, and protected and defended them in their possession. The Chief and his nearest relations were highly favoured in the distribution of the tribal lands; but this did not alter the jural relations of the land so held. The Chief himself was not always or necessarily the eldest heir male of the preceding Chief, but was chosen as the eldest and most worthy from amongst the male relations of the leading family. The introduction of the Feudal System gradually altered this state of things, and the chief of the tribe became the feudal lord, and the men of his clan his feudal vassals. This change began to be effected as soon as the Kings of Scotland combined the Picts and the Scots into one nation, and was in full force and effect soon after the introduction of Feudalism into England in the eleventh century. It remained in full swing till the Kings of Scotland reduced the refractory barons to absolute submission, and was effectually abolished only after the Rebellion in Scotland in 1715.

In Scotland, till the reign of Malcolm Mackenneth, the highest dignities were those of Knight, Thane, Ab-Thane; and some of the greatest heroes of Scotland, Randolph, Moray, and Douglas, never held any other title than that of Knight. Of the dignified titles of Earl and Baron, Marquess and Viscount, there is no doubt that the two former are of more ancient use in Scotland than the latter two. At a very early date—in the 12th century—Thanes are expressly called Barons, and exactly correspond to the tenants in chief of the English King.

Notwithstanding the Act passed in the reign of King James I., in 1427, dispensing with the necessity of the attendance of the lesser tenants in chief at the High Court of Parliament, it was not till the reign of King James VI.,

in 1587, that strict peerages, as personal honours, inhering in the blood, came into existence in Scotland. From the 16th century, however, this principle of the indelible nature of noble blood was recognised in the northern kingdom. Thenceforth, titles of honour in Scotland were converted from territorial dignities into Parliamentary rights, and the owners thereof, until the Union between England and Scotland, became hereditary councillors and lawgivers of Scotland. Strange as it may seem, this great constitutional change was the main reason for the passing of the Entail Act of the same reign. Previously, land and title had been combined; thenceforth they might be separated. To keep them both together, the Entail Act was made the law of Scotland: and the owners of great feudal estates, and the possessors of the noble titles were intended, by its means, to be always one and the same.

The Feudal System was a powerful factor in English history nearly down to the reign of King Henry VIII., and was not abolished in Scotland till 1715. But long before those dates, its foundations had been thoroughly undermined and were crumbling into dust. Two features of the Feudal System deserve a passing notice here. Military service was its essence, and jurisdiction in every lord of the soil was universal. Both have disappeared in point of law, but they have left their impress on the History and Constitution of our country. According to the Feudal System in its legal aspect, every feudal lord was master and owner of all within his territory and was responsible only to the King for his exercise of authority. He summoned his Tenants to his Court, and they were bound to appear and aid him in the administration of justice. Again, the feudal lords, as the King's Tenants in chief, had to appear in the King's Courts to administer justice, and to sanction new laws and aid in the determination of the general policy of the nation.

Creation of Peerages by tenure began in England in the

reign of King William I. Of English Peerages by tenure, the only one existing is that of the Earldom of Arundel, and even that, in the words of the Report of the Lords' Committee of 1819, pp. 422-3, is stated to be "annexed to the Castle, Manor and Lordship from time immemorial and is not founded on the general law of the land, but on a special presumption in respect of the particular property, and particular dignity." Subsequently, in the reign of King John, Parliamentary Barons were created in England by tenure and Writ of Summons, or by Writ of Summons only. This practice continued till the middle of the reign of King Richard II., and was followed by the creation of Parliamentary Barons by the King's Letters Patent, and occasionally by the King's Writ of Summons. Both in England and Scotland, there are many instances of Parliamentary Barons being created by the King, with sanction and consent of the High Court of Parliament. I need hardly add that these are found at an early date, and before Peers were created by the king alone. In Scotland, however, this practice was in existence almost down to the succession of King James VI. of Scotland to the throne of England.

Till the latter part of the reign of King John, all the English Barons who held by tenure in chief of the King, *i.e.*, by common Knight Service in Chief or Grand Serjeanty, were lords of Parliament, and entitled to be summoned to the King's Highest Court, and, under pain of being fined for their absence, were bound to attend it. After the reign of King John, only the more eminent Barons, *Majores Regni Barones*, were entitled to the dignity of the peerage, and they were summoned by special writ to appear in Parliament.

The Writ of Summons to appear in the High Court of Parliament was very short; but Letters Patent were much more elaborate.

A creation of Peerage by Letters Patent contains a preamble as to the benefits conferred upon the nation by

advancing merit to its proper place in the government of the country; states the merits of the patentee; specifies his title of dignity, and the mode of investiture; limits the title to the patentee and his heirs male; and declares that he and they shall have a seat and voice in Parliament Councils, and all the privileges and immunities of the honourable dignity conferred upon the patentee and his heirs. Honorary possessions, usually consisting of castles, manors, or other lands held in chief by common Knight Service, or by Grand Serjeanty, or by both, were bestowed on the newly-created Peer and his heirs male.

As regards the institution of belting Peers, "*accingere gladio*," it appears to me that, notwithstanding the opinions held by some eminent authorities, this practice was merely the solemn inauguration of a Peer after his creation or on the succession of a successor. Cruise holds, p. 67, that in all cases of belting there was probably a charter granted; and Selden on Titles of Honour says that belting was not used at the investiture on a creation, but only where liveries or confirmations of Earldoms were made to heirs. Thence, he goes on to say, Hoveden hath the phrase "*accingere gladio comitatus patris sui*," in reference to a confirmation by Richard I. of the Earldom of Leicester to Robert De Bellomont, as heir of his father in the same. Considering the forms of investiture which are mentioned in history, I am more than doubtful of this view of the matter, and am inclined to think that Selden, for once at all events, is laying down a general principle based on a particular instance.

Territorial dignities annexed to land remained in existence much longer in Scotland than in England, and were the subjects of alienation to strangers at a later period in Scotch than in English history. Indeed, till a very recent period in Scotch history titles of dignity were as much rights of property as any heritable subject, and the same rules of law were applicable to them. No doubt, the consent of the

King was required to make such an assignment effectual; but this was in exact analogy to the mode of proceeding in the transference of an heritable or landed estate.

In 1371, the Earldom of Wigton was disponed by Thomas Fleming to Douglas, Lord of Galloway, and the disponer ceased to be Earl, and the disponee's representatives, the Douglases, used the title of Wigton. In 1455, William Sinclair, Earl of Orkney, obtained the Earldom of Caithness from King James II., and afterwards resigned the Earldom, and ceased to use the title. There are, in fact, numerous Scottish instances of settlements and resignations to the King, and of regrants of titles of landed estates, *e.g.*, Dunbar and Huntly; and neither the law nor the practice of making them was ever disputed in Scotland. An instance of a Scottish Peerage being alienable is to be found as late as 1607 in the case of Seton, and even as late as 1681 in the case of Baillie of Torwood. Resignations and regrants by the sovereign were declared illegal as regards Scottish Peerages in the case of the Stair Peerage in 1748; and as regards English Peerages in the Purbeck case in 1675.

By way of illustrating the Scottish law as to the resignation of honours and dignities, and because it helps to explain a legal contest in a strictly-contested Peerage claim, before the Union between England and Scotland, I here give the case of Lord Oliphant in some detail.

Laurence, Lord Oliphant, executed a procuratory of resignation of his honour to Patrick Oliphant, his collateral heir male. After his death, his only child, with consent of Sir James Douglas, her husband, raised an action of reduction against Patrick in the Court of Session for the reduction of the conveyance, and grounded her action on her decree of service as heiress of line. In 1633, the Court of Session decided on the dignities as follows:—That use and solemn recognition are enough, by the law of Scotland,

to constitute and transmit them when the patent did not exist; that they are descendible to heirs female if not specially barred; that they were not *in commercio*, and did not require infeftment; that the late lord had denuded himself and his descendants of the dignity, "ay and until the Prince should declare his pleasure, and either confer the honour on the pursuer or the defender."—(Durie's Decisions, p. 685).

By the Articles of Union between England and Scotland, it was declared that the Scottish Nobles were to have and possess the whole rights and privileges of the British Peerage, with the exception of individually having the right to sit and vote in the British House of Peers; and that they were to be represented in the House of Lords by sixteen of their number being elected for each Parliament as their representatives. The Articles of Union also declared that no new Scotch Peers should be created by the Sovereign. It is here worthy of remark that there is not a word in the Treaty as to the way in which disputed claims to the Peerage were to be determined. As there is not, it is to be inferred, as I shall prove hereafter, that the then existing mode of proceeding was meant to be applicable; or, at all events, if a new privilege was to be conferred, the old mode was not to be abrogated. It is also worthy of remark that no creation of a Scottish Peerage exists by mere summons to the High Court of Parliament and sitting in Parliament by the person summoned. Nor, let me add, is there a single instance of the creation of a Scottish Peerage by Letters Patent till the end of the sixteenth century, when King James VI. began to imitate and adopt the practice which had been established in England nearly two centuries earlier. That anyone could suppose that in the reign of Queen Mary, the mother of King James VI. of Scotland, the *comitatus* was different from the title and dignity of Earl, as was lately done in the Mar Peerage

claim, decided in 1875, shows profound ignorance of the history of Scotland, and raises grave doubts as to the constitution of the tribunal at present entrusted with the decision of Scottish Peerage claims.

From the earliest date of the connection between England and Ireland, the Irish Peerages were subject to the same rules and the same historical development as the English. The only difference between them was that an Irish Peerage was restricted to Ireland, and an English to England. This state of things continued till the Union of Great Britain and Ireland. By the Articles of Union in 1800, it was declared that the Irish Peers were to be represented in the British House of Lords by twenty-eight of their number, and the Sovereign was not to have any power thereafter of creating Irish Peerages until, and only when, the number of Irish Peers was reduced to 100. It was further declared by the Articles of Union between Great Britain and Ireland, Article 4, that the British House of Peers had power and authority given to them in all questions arising as to Irish Peerage elections and relative claims, with full power to decide the same. As is well known, the Irish representative Peers are chosen for life; while, as I have already stated, the Scottish representative Peers are chosen for every Parliament. Why there should be any difference in this respect as between Scotland and Ireland is rather strange, and not easy to understand.

Having given this brief historical retrospect of the British Peerage, I proceed to explain the procedure in contested claims to the Hereditary Peerage of England, Scotland and Ireland.

From the earliest period to the present time, all disputed claims to the English Peerage have been commenced by petition to the Crown. The only exception to this practice is in the case of the Earldom of Northumberland in 1672; and even there the original application, which was addressed to the House of Lords, was supplemented by a petition to

the King, who afterwards referred it to the Lords. Without a reference to the House of Lords by the Crown, says Cruise on Dignities, p. 255, the House has no right to entertain a claim to a dignity. At pages 305-6 he lays down that "the King, under whom the entire jurisdiction over dignities is placed, may refer the case again to the House of Peers or elsewhere, and may ultimately act according to his own discretion, and there are some instances where the Crown has granted a second reference, upon which the Lords have come to a resolution directly contrary to their former one."

Rigidly and firmly the principle that the Sovereign is the sole fountain of honour has been maintained in England. When the case was simple and clear, and after some more or less formal inquiry by command of the Crown, the Writ of Summons was issued or refused. When the case was complicated and obscure, the Crown issued a Commission of Inquiry to investigate the whole matter and to report. On a report being made, the Crown, by virtue of its prerogative, gave judgment. This is the correct *theory* still; but now the Report of the Commission is invariably adopted by the Sovereign. In olden times, Commissions of Inquiry were issued by the English Sovereign to the Judges, to the Earl Marshal and Lord High Constable, and to members of the nobility. Practically, the Sovereign was then unfettered, by law or by long-established usage, as to the choice of Commissioners to investigate Peerage claims. But, for the last 300 years, the universal rule has been for the Crown to refer difficult Peerage claims to the House of Lords, and for the House to refer them to its Committee of Privileges to investigate and report, and for the House, by resolution, to adopt the Report of the Committee, and remit the same to the Sovereign. The resolution of the House of Lords is invariably that the claimant has, or has not, made out his or her claim.

I am aware that the House of Lords has the power, under the Irish Act of Union, of investigating and deciding on Irish Peerage claims; but it has never exercised it; and in the Waterford Peerage case in 1832, the parties were urged to adopt the English practice for the sake of uniformity, and they wisely acted accordingly. As regards Scottish Peerages, I shall afterwards prove that, from a Constitutional point of view, the House has even less inherent power of jurisdiction than in claims to English and British Peerages.

In the legal determination of disputed claims to the Scottish Peerage, the procedure, from an early date up till and even after the Union between England and Scotland, was altogether different from the English practice.

The great principles which lie at the foundation of the Scottish practice are that Peerages were of the nature of rights of property, were originally annexed to the ownership of lands and vested in a noble fief, and were to be determined in the ordinary course of the administration of justice. Therefore, up till the middle of the eighteenth century the question to be decided when a Lord of Parliament died was this:—Who was his successor? If he died without a settlement, this was decided by a Jury before the Sheriff of Chancery on a petition for service, and is so decided still. If a service was wrongfully obtained it could be reduced, in the ordinary course of law, by a Jury on an Assize to try whether or not a false return had been made. The Mar Peerage case affords an example of a service being obtained and afterwords annulled and set aside. If the defunct had made a settlement, the question which emerged was whether or not it was legal, and this question was legally and properly decided in an action of reduction. To speak of the Court of Session having exclusive jurisdiction in disputed Peerage cases in Scotland would be altogether improper. The Court of Session, as the Supreme Court of Scotland, took

cognizance of Peerage cases not by any privative or exclusive jurisdiction, but in consequence of the nature of the action at law adopted, or as a Court of Appeal. But I anticipate events.

For two or three centuries after the establishment of the Feudal System in Scotland the proper court for the reduction of a False Service was the local court of the Sheriff, with a right of appeal to the King's Chief Justiciar, and from him to the King and Parliament. After 1425, the Court of the Lords of Session, composed of the Lord Chancellor and discreet members of Parliament, was established to dispose of all the legal disputes brought before Parliament; and, after 1503, the Court of the King's Council was established, and had conferred upon it jurisdiction co-ordinate with the Lords of Session. After the erection of the Court of Session in 1537 by King James V., and its sanction by Parliament in 1540, there are numerous instances of disputed Peerage claims being raised in this Court; but not one betrays any peculiarity arising from the nature of the particular subject-matter at issue. Every one treats the matter as a question of pedigree, and is for reduction of a service, or of illegality and falsehood, or for reduction of the deeds or documents complained against. In a word, the Court of Session had no peculiar or exclusive jurisdiction in claims of Peerage, nor had any other supreme Court before its establishment and erection. I shall now mention a few Peerage cases decided by the Court of Session, and which help to illustrate and explain the statements I have just made.

On the 29th of March, 1542, the Court of Session, on the ground of a fraudulent resignation in favour of Robert Douglas of Lochleven, reduced a charter granted by King James IV., in 1546, of the Earldom of Morton, with the seignorial rights and accessories. In 1581, James Hamilton, Earl of Arran, obtained, in the same

court, a reduction and rescission of various documents by which his rights were unjustly and illegally affected, and also restitution *in integrum* to all "ye honoris and dignities and privileges." In this case, the illegal possessor had actually been installed in the Earl's rights, and the usurper's title had even been ratified by Parliament. As has already been shown, it was decided in the Oliphant case by the Court of Session, in 1633, in an action of reduction, that titles of honors as well as land may be conveyed by disposition and resignation.

Many other instances could be given in which the Court of Session exercised jurisdiction in Peerage cases. In 1542, 1547, and 1586, the Earldoms of Morton, Angus and Arran, including the dignities, were all discussed and the legal rights thereto determined by the Court of Session. Further, the claim for precedency between the Earls of Errol and Sutherland was before the Court of Session in 1661, and, as to this claim, we have evidence, as might be expected from what I shall state hereafter, that the Scottish Parliament disclaimed the right to decide it. Nay more, by a letter, written in 1679, by King Charles II., the unlimited cognizance of the Court of Session as to claims affecting the Scottish Peerage, is acknowledged. Moreover, the Scottish Privy Council, in 1682, in the claim of the Earl of Rothes, who had applied to the Privy Council to obtain his rights as a peer, referred his application to the Lords of Session "to be discussed by them as accords of law." Again, in 1689, while Parliament granted interim possession, the question as to the precedency of the Earls of Tweeddale and Selkirk was declared by Parliament to be cognizable only by the Court of Session. Even down to the Union, and between 1689 and 1706, the Scottish Parliament acknowledged the ordinary jurisdiction in questions of precedency to be in the Court of Session. In 1706, the

year before the Union, the Scottish Parliament would not discuss the claim to the Kincardine Peerage, and merely granted interim possession to the claimant, and reserved the right of discussion to another tribunal, namely, "the Lords of Session as accords."

Thus, down to the Union, the ordinary local courts first determined the successor to a deceased peer by means of a decree of service, and all disputes as to the Scottish Peerage, and the collateral right of precedency were determined by the Court of Session, or the Supreme Court of Scotland, and usually under its high prerogative power of reducing the Judgments of Inferior Tribunals, or on the ground of illegality or fraud, the illegal deeds granted by private individuals. That the Scottish King, before 1425, may, with the help of his Council, have decided questions of disputed Peerage I think very probable. That after 1425, he ever did so by himself, or with the aid of his Council, I think highly improbable. That he never did so after the erection and establishment of the Court of Session is absolutely certain. Nor was the right of the Scottish Parliament finally to decide such matters in any way recognised by the laws of Scotland. When the Scottish Parliament did interfere in Peerage cases, it was merely to give a temporary right, that is to say, interim possession, until the actual rights of the parties were discussed and decided by the proper Tribunals, namely, the ordinary local courts, and, as already explained, the Court of Session, whose competency was recognised and enforced by the Crown, the Privy Council and Parliament down to the Union, and whose exercise of unquestioned jurisdiction can be proved down to the year 1740. The Lovat Peerage case was decided by the Court of Session in 1733.

True, a different course was adopted by Parliament in 1685 as to the precedency of the Earls of Roxburgh and Lothian; but it is unsupported by law, and was even

condemned by high legal and contemporary authority. Indeed, it is condemned by the letter of King Charles II. to the Court of Session, dated the 16th of July, 1679, expressly recognising their lordships' jurisdiction in the matter in dispute —*i.e.*, precedency—and also virtually by a letter of King James VII., to his Commissioner, dated the 11th of May, 1685. The dispute between the Earls of Roxburgh and Lothian was ultimately, and finally and conclusively, solved by the creation of the Dukedom of Roxburgh in 1706.

In the Report of 1740 by the Court of Session, as to the Scottish Peerage, the Court asserted its right to entertain and legally decide all questions relating to the Scottish Peerage. How could it be otherwise? Neither the Court of Session, nor the ordinary courts of local jurisdiction in Scotland, have lost or been deprived of their jurisdiction. All their rights and privileges as at the Union are preserved by the Articles of the Union, and no legislative enactment since the Union has been passed on the subject. Nothing has been done except what is implied by the voluntary and personal submission of Peerage claims to the decision of the Crown. Therefore, whatever may be the legal effect of such voluntary submission as regards the parties who have so submitted, and their heirs, and whatever may be the difficulties in the way of attempting to set aside the decisions of the Crown as *ultra vires*, nothing whatever has been done to abrogate or annul the jurisdiction of the Court of Session in Peerage claims which may hereafter be brought before the Court. If the Scottish peers have a legal right, under the Articles of Union between England and Scotland, to petition the Sovereign to decide on their rights, they have not lost their right to appeal to the ordinary courts of law of their country in such matters.

The right of appeal exercised by the House of Lords in Scotch cases does not affect the contention here stated, and can only, at the utmost, render Scotch Peerage Claims

subject to appeal to the House of Lords in its judicial capacity. For my own part, I submit that a claimant to a Scottish Peerage can legally proceed to prove his claim in the Court of Session, and afterwards, if he thinks fit, appeal to the House of Lords.

The preliminary steps taken by a person succeeding to an English Peerage and by one succeeding to a Scottish Peerage were essentially different. In the former case, a writ was issued from Chancery as a matter of course, or the right to the Peerage was first determined by the Crown, or after a report by a Commission of Inquiry, appointed by the Crown. While, in the latter case, the person claiming to be a peer and successor in a Peerage, obtained a Decree of Service in his favour as heir, and then obtained possession, interim or final, in the course of proceedings instituted before the proper tribunals to decide thereon. As I have already explained, if any dispute arose as to the right, it was decided in the Court of Session as in an ordinary civil action, as in claim to heritage, or as in a proof of a pedigree.

Till the middle of the last century, the mode of proceeding in claims to a Scottish Peerage was very usually by means of an Action of Reduction and Declarator raised in the Court of Session, for the purpose of reducing the Decree founded on by the Defendant, and of declaring that the Plaintiff was entitled to the Peerage. In one instance before Parliament, and here given as an outline of a complete Peerage claim in Scotland, the proceedings were as follow: 1 a petition to the court alleging the Petitioner's right to the Peerage, and stating all the grounds upon which the claim was made; 2 a warrant or charge against the defendant, summoning him to appear to answer the petition; 3 an answer, called an Information, by the Defendant to the petition; 4 an answer by the petitioner to the Defendant's information or statement; and 5 a reply by the Defendant to the petitioner's answer. The account of the

pleadings here given is taken from documents in the charter chest of the Crawford family as to a Peerage Claim before the Scottish Parliament; but in all its salient and important features, it is perfectly accurate as an account of the pleadings which would have taken place, as they ought to have taken place, in the Court of Session.

After the pleadings were finished, the Court tried and decided upon the respective averments of the parties, and did so according to the established laws and customs of the Realm.

This ancient mode of proceeding is well worthy of consideration by claimants to Scottish Peerages. It has the advantage of being conducted in the presence of trained Judges and Advocates, well versed in the history and antiquities and legal principles of Scotland, and of being much less dilatory and expensive than the present expensive and tedious process in the House of Lords. When the Committee of Privileges in the House of Lords had a Mansfield, a Loughborough or a Brougham—all Scotch as well as English lawyers—amongst them, the ancient laws and customs of Scotland were in no great danger of being ignored or overlooked. But, when merely English trained lawyers are called upon to decide finally and also in the first instance, upon matters of pure Scotch law and history, there is a grave danger of English law being applied to a greater degree in Scotch Peerages than ought to be the case. I have the highest opinion and veneration for the resolutions of the Committee of Privileges. Still, I humbly believe that an unfortunate, if not an unconstitutional attempt has been made, in several cases contested in the British House of Peers as to the Peerage Claims from Scotland, to engraft the English Peerage law upon the rules of Scotch law as to Titles of Dignity. By the law of the land, the law of Scotland ought to be applied to all cases arising in Scotland. This is the principle laid down in the Articles of Union,

and repeatedly acknowledged by the most learned lawyers in treating of this subject. That the law and practice of Scotland should alone be applied in Scotch Peerage cases was held in the Cassillis case in 1762, in the Sutherland case in 1771, and in the Moray case in 1793, and also as to the votes at the Election of Peers in Scotland in 1822 and 1830. Further, Lord Eldon, in the Annandale Peerage case, decided in 1826, said—"There is no doubt that the law of Scotland would equally apply in the case of a dignity which applies to an estate," and Lord Brougham, in the Polwarth Peerage case, decided in 1835, said—"We (the Committee of Privileges) are sitting in a Scottish Court as a Court of Appeal." In the Cassillis case, Lord Marchmont said that "the case must certainly be determined upon the general principles of the law where the case itself took its rise." Here, let me add that it was in the last mentioned case that it was laid down that, where honours did not clearly descend to heirs female, they ought to go to heirs male. This resolution or ruling, of course, never could, and never was intended to exclude heirs female. On the contrary, the Sutherland Peerage case was decided in 1771, on the strength of the evidence given in favor of the heir female; and, in the Borthwick Peerage case, decided in 1808, evidence was allowed to be given in favor of the contention that heirs female were entitled to succeed to the Borthwick honours.

Taking all these facts into consideration, I am inclined to think that it would be well that, henceforth, all decisions in Scottish Peerage claims should first of all, be decided by a regularly constituted Scotch Tribunal. No one can doubt that a thorough investigation of the law, and of the whole facts and circumstances, in the ordinary court of the administration of justice, is a matter of the greatest importance in the furtherance of justice. And I venture to add that no Tribunal, or Court of Inquiry,

is so well qualified to make that investigation in Scotch Peerage Cases as the Supreme Court of Civil Jurisdiction in Scotland. Nay more, I would even venture here to suggest that the old mode of determining claims to the Scottish Peerage in the Supreme Court of the land, might be very advantageously adopted by the Legislature in all claims to the English, Scotch, Irish and British Peerage. The House of Commons has virtually divested itself of the power to decide upon the election of its members. Why should not the House of Lords facilitate the passing of a law by which the claims to the Peerage might be delegated to a regularly constituted legal Tribunal? Certainly the Sovereign has no interest in opposing an improvement demanded in the interests of Justice.

With regard to precedence, which is an important collateral incident of every Peerage, the right of original jurisdiction has always been asserted by the House of Lords in England, or by the Heralds, its officers. Formerly, when questions of place or precedence arose in England, the Heralds of the House of Lords decided them; but now the invariable practice is for the House itself, or its Committee of Privileges to decide upon them. Thus, in a claim decided in 1736, it is rightly observed in the argument that, while the King's Writ of Summons gives the person summoned a right to sit in Parliament, "his rank and precedence are matters merely collateral. Of these latter, the Heralds take upon themselves to be Judges in the first instance. If any question arises upon the place given by the Heralds, it is decided by the Lords of Parliament in the House of Lords as a matter of privilege."

The order of precedence in English Peerages was laid down in a Decree of Parliament in the reign of King Henry VIII., and it is worthy of observation that the King's High Officers of State are ranked at the top of the list of the class of nobles of which they were members, and for the

high excellency of the office, even higher. This fact leads us back to the primary order of all monarchical honours, as being essentially official in their origin and ultimate character.

In Scotland, the quarrels between the nobles as to precedency gave rise to many fierce and bitter disputes. Amongst a proud and turbulent nobility, the Scottish King had no easy seat on his throne. The Parliamentary Journals of Scotland prove that the disputes for precedency amongst the nobles were often carried to a great height, and even impeded and obstructed the transaction of public business. To put an end to these unseemly quarrels, King James VI. appointed a Commission to inquire into the precedency of all his Scotch nobles, and subject to an appeal to the Court of Session, to fix and determine the precedency of them all. This was accordingly done by the Commissioners; and a Decreet of Ranking by interim decree, or *uti possedetis*, was issued by an Act of the King's Privy Council on the 5th of March, 1606. This decree affirms that it was to stand "ay and untill ane decreit before the ordinar Judge be recovereit and obteinit in the contrair," and contains a reservation "to such persoun or persouns as sall find themselves interest and prejudgeit by thair present ranking, to have recourse to the ordinar remeid of law be reductioun before the Lords of Counsell and Sessioun of this present decreit." Here again, we have an instance of the form and grounds for the exercise of jurisdiction in Peerage Cases by the Court of Session, which explains the exercise of jurisdiction in severa instances mentioned in this article.

With a few slight exceptions, this Decree is in force to this day. But it cannot be denied, and has long ago been proved, that this Decree is far from being accurate, and that there is great need for its being thoroughly revised by some competent authority, and a new list of Scottish Peers made up under, and by virtue of, legislative authority.

There is yet another mode of deciding contested Scotch Peerage cases to be mentioned. I refer to the proceedings in the Somerville and Colville cases, decided in the last century, and subsequently followed in other cases. I take the case of Lord Somerville by way of illustration. In 1721, the Marquis of Tweeddale, Chief Secretary of Scotland, protested at the election of Scottish Peers, that James Somerville of Drum, or Lord Somerville, should not be admitted to vote until, in the House of Lords, he had established his right to the dignity he asserted he rightfully possessed. In 1722, on the motion of Viscount Townshend, Secretary of State, the protest was referred by the King to the consideration of the House of Peers. On the motion of the Committee of Privileges the claim was allowed, and was confirmed by the King in 1723. In these cases the Committee of Privileges considered the protest, and investigated the contentions of the parties before them, and reported to the House of Lords as in a regular Peerage claim.

For more than a century the Roll of Scottish Peers has, as I have stated, been thought to be in a most unsatisfactory condition. Several times, unqualified persons have voted at the election of the representative Peers of Scotland, and at the present moment, there is nothing to hinder an absolute stranger from answering for an absent peer, or for an extinct peerage, and tendering his vote at such election. That this is the case is simply scandalous, and ought to be put an end to without further delay. To show the fruitless efforts hitherto made to provide a remedy in this matter, I shall mention a few facts to show the direction of the remedies hitherto attempted, and to indicate the steps which ought to be taken in order to provide an effective remedy for the future.

On the 9th March, 1761, the House of Lords appointed a Committee to make up a list of the Peers of Scotland, as at

the time of the Union, whose peerages were then continuing, with power to summon all proper persons before them, and to report from time to time. On the 15th of March, 1762, they ordered a reprint of the Report of the Court of Session in 1740; and on the 20th of March, 1767, they formed themselves into a Committee "to consider the most proper means effectually to ascertain the descents of the Peers of this Kingdom, so that the Crown, or this House may not incur the risk of being imposed upon by any ill-founded claim of Peerage." Several resolutions of the same kind have since been passed; but, with regret it has to be acknowledged, nothing effective has been done. Not only did the late Lord Rosebery make yet another ineffectual effort to remedy this grievance; but, as recently as 1881, a Committee to inquire into the condition of the Scottish Peerage Roll was appointed by the House of Lords, and was reappointed last year.

Again, by a resolution of the House of Lords in 1822, rescinded on the 25th of July, 1862, it was declared that, except sons and certain other specified near relations of deceased peers and peeresses none, until their rights to the peerage of Scotland had been made out to the satisfaction of the House of Lords, should be allowed to vote at the Election of the Representative Peers of Scotland. Matters are, therefore, so far as this resolution is concerned, exactly in the same position as before its passing. In these circumstances, I venture to suggest that the most effective remedy is the appointment of a Royal Commission, composed of Scottish peers, to make up a full and complete Roll of the Peers of Scotland as at the present time, and a subsequent statutory enactment that no person not on that Roll, or on a Roll to be regularly made up by the Lord Clerk Register, shall be entitled to vote at the Elections of the Representative Peers of Scotland. After the Royal Commissioners have done the work committed to them, no addition ought

to be allowed to be made until a claim to a Peerage is fully and completely made out according to the law and practice of the Realm.

I am aware that, during the last Session of Parliament, a Bill was introduced into the House of Lords "To regulate procedure at the Elections of Representative Peers in Scotland, and for other purposes." But I confess that, in my opinion, the provisions of that Bill do not go far enough, nor are they based on such a full and searching inquiry as appears to be required. Briefly, this Bill proposes that an annual Roll of Peerages and Peers of Scotland should be made up by the Lord Clerk Register, that persons whose names and titles have been omitted from this Roll, should have power to appeal to the Court of Session for redress; that the Court should give their decision on such application and report the same to the House of Lords; and that the House of Lords may direct the petition, evidence, and report to be considered by their Committee of Privileges, and give such directions to the Lord Clerk Register as may seem just. The proposals of this Bill are essentially different from the suggestions I have already ventured to make. I myself have the greatest respect for the distinguished abilities of the nobleman who now holds the honourable office of Lord Clerk Register, but I hardly think his lordship could personally undertake to make up a Roll of the Scottish Peers to his own satisfaction, without an amount of labour too great for one man. I therefore think that a Roll should be made up under a Royal Commission composed of the most learned Scottish Peers who are willing to serve their Queen and country by fixing and determining the list of the Scottish Peers. In this matter the country at large is deeply interested as well as the Scottish Nobility; for the Scottish Peerage is a part of the Constitution of the Realm, and its members have important national functions to discharge. I would therefore humbly submit

that steps should be taken effectually, and for ever, to purge the list of the Peers of Scotland, and give their lordships their proper places in the way of precedence, after a full and complete inquiry into the claims, and to give all persons who thought themselves aggrieved a full and ample remedy to obtain redress of their grievances. To insist upon this is no great hardship, although a more expensive proceeding, than to enforce a full and accurate list of Voters entitled to give their suffrages for the Representatives of the People in the House of Commons.

As to the constitution of the Court I have also a proposal to make. For my own part, I would prefer to see the ancient jurisdiction of the Court of Session again set in motion for the determination of Peerage Claims in Scotland, and the adoption of a similar course in regard to English and Irish Peerages before the Supreme Courts of England and Ireland. After full inquiry by the Supreme Courts of the Law, Peerage Claims would then properly be subjected to the right of appeal to the Judicial Committee of the House of Lords. This course of procedure would bring about the fullest and most ample inquiry by the most competent Court in the first instance, and an appeal to the most capable and august tribunal in this country, or, I might say, of the whole world. But, whatever I might wish and peradventure hope to see, I fear very much that the time is not favourable for making any proposal of the character I have indicated. Be this as it may, I do think that the country ought not to be satisfied with the haphazard and somewhat unsatisfactory tribunal now entrusted with the investigation of Claims to the Peerage. At the very least, all the members of the Committee of Privileges should be trained lawyers. Above all things, I would submit that all claims to the Peerage should be fully and minutely expounded at the very outset of the investigation, and effective steps taken to have the evidence,

oral and documentary, presented to the House in a more orderly and natural way than has usually been the practice before the Committee of Privileges. To bring this about, the claimants and the objectors must be ready and able to proceed *de die in diem* with their respective cases before the Committee. The delays incident to a Peerage Inquiry are very expensive and very injurious to a due and proper dispensation of justice.

Finally, on the whole, and as the most suitable procedure for the purpose of investigating the contested claims to the Peerage of England, Scotland and Ireland, I would venture to suggest that there should be (1) a petition by the claimant to the Crown; (2) a reference by the Crown to the House of Lords; (3) a remit by the House to a Judge of the Supreme Court of the kingdom in which the claim arose authorising him to investigate the whole case, according to the law of the land, and ordering him to report his proceedings and opinion to the House; (4) a power of afterwards remitting the whole case to the Judicial Committee, or the Committee of Privileges of the House, for further consideration and report, and, where necessary, a report by such Committee; (5) a resolution by the House to be reported to the Crown; and (6) a final and conclusive decision by the Sovereign on the petition. Under this procedure, British Peerages created by the Sovereign since the Union between England and Scotland, would naturally fall to be treated as arising in England. Whatever may be done to remedy the present evils as to contested Peerage claims, the existing procedure is self-condemned by its enormous expense and lamentable dilatoriness.

ALEXANDER ROBERTSON.

VI.—THE NEW ALABAMA LAW ON THE EVIDENCE OF DEFENDANTS IN CRIMINAL CASES.

WE learn from our contemporary, the *Alabama Law Journal*, of December, 1882, that the new Legislature of that State has signalised its first Session by passing a statute establishing a reform which has received much attention in this country, both at the Congresses of the Social Science Association and in the Committee of its Jurisprudence Department, viz., the admissibility of defendants in Criminal cases to give witness on their own behalf.

It may not be without interest for those who sympathised with the views of Mr. G. W. Hastings and the Hon. Evelyn Ashley, and their efforts in this direction, to know the tenor of the recent statute of Alabama.

House Bill No. 62 of the Session of the Legislature which opened on the 14th November last, having been approved by the Governor, became law on the 2nd December, and is remarkable for its conciseness no less than for its importance. We reprint it in full from our contemporary, in the number above cited, Vol. I., p. 381.

"Acts of the Legislature. House Bill, 62. An Act to permit defendants to make statements in their own behalf in all trials of indictments, complaints, or other criminal proceedings.

"SECTION 1: *Be it enacted by the General Assembly of Alabama*, That on the trial of all indictments, complaints, or other criminal proceedings, it shall be competent for the defendants to make a statement as to the facts in their own behalf, but not under oath.

"SECTION 2: *Be it further enacted*, That shall any

defendant fail to make a statement, as provided for in the previous section, it shall not militate or be made the subject of comment against him.

"Approved December 2, 1882."

In 1876, when this question was engaging the serious attention of the Law Amendment Society, the then Assistant-Secretary was directed to send out a Paper of Questions to the Chief Justice and Attorney-General of every State in the United States of America, and of each of the Provinces of Canada, among the Colonies of our own Country. The result, though replies were not received from every official thus addressed, was the collection of a vast mass of most valuable information respecting the law of the several States and Colonies, and the views of persons in the highest legal positions as to the working of such law.

It is much to be hoped that this mass of materials may yet be placed before the legal Profession and the public generally, instead of being confined, as it practically is at present, to the members of the Association which undertook the investigation of this difficult but interesting problem in Criminal Jurisprudence. We quite well remember that no little divergence of views was manifested by the several authorities who filled in replies, as to the working of the system in the everyday practice of the Courts. The preponderance of opinion, however, was, if we mistake not, in favour of the change. But in some States of the American Union, and in some of our Colonies, opinion was quite as opposed to it as it is in many quarters at home. Our Alabama contemporary itself speaks very guardedly, saying that the new Act makes a radical change in the Criminal practice of the State, and that whether for good or ill time alone can prove, though the Editor is evidently more inclined to fears than to hopes.

It will be observed that the Alabama statute only provides for the admissibility of the evidence of the defendants themselves, not of their husbands or wives, as has been proposed in this country. In seven States of the Union, it would appear from the brief analysis of the replies given in the present Secretary's most useful *Manual for the Congress* (Offices of the Association, 1, Adam Street, W.C., 1882), husbands and wives are competent so to give witness. But we are, at present, unable to reconcile the apparent inclusion of Alabama (*Manual*, pp. 89—90) as one of the States where defendants were themselves allowed to give evidence, at the time of the Society's investigation of the subject, with the authoritative text of the Law of December, 1882, which we have printed as a *pièce justificative* of no small interest to Jurists and Law Reformers.

We shall look forward to details of the working of the new system in future numbers of the *Alabama Law Journal*.

Quarterly Notes.

We are glad to observe some interesting comments on certain very unsatisfactory features of the existing American Law of Copyright in our valued contemporary, the *Southern Law Review* for October and November, 1882. The Law provides that books for which copyright is sought shall be registered, and two copies be deposited in the Office of the Librarian of Congress, but it omits to provide what shall be evidence of the deposit. Now, the deposit of two copies of the work entered being quite as much an essential ingredient of American copyright as the registration of the title, it follows that it is in the highest degree important to know what constitutes the legal evidence of such deposit. The practice of the Librarian of Congress, since the

alteration in the Law which requires that two copies be presented, has been, it appears, to endorse the certificate of registration, with a statement of the fact of the deposit. But in *Miller* v. *Tice* (104 U.S., 557), the Supreme Court of the United States recently held that such endorsement was *not* evidence of the fact that the books were so deposited. The endorsement is in fact, says the *Southern Law Review*, no more than "a memorandum which might serve to refresh his (the Librarian's) memory, if he should ever be called as a witness to the fact." This being so, it is of course a purely personal memorandum, and the question arises, which our contemporary very pertinently puts : "Suppose he (the Librarian who made the memorandum), and those of his associates who have knowledge of the facts should die, how could they be proved?" Of this knotty problem, the *Southern Law Review* offers what in our opinion is, in the main, the true as well as the natural solution. It proposes an amendment of the Law, authorising the Librarian of Congress, upon the request of any person, to give, under his hand and seal, a certificate of the date when two copies of any work were deposited in his office under the Copyright Law.

We would ourselves go somewhat further, and would suggest that as the depositors for copyright purposes are the primarily interested persons, such certificate, which it is provided shall be *primâ facie* evidence of the deposit, should issue as of course to the depositors.

The absurdity of the existing state of things is that in any case where the Librarian of Congress has given a certificate of deposit, the legal two copies were no doubt standing on the shelves of the Library of Congress, ready for exhibition in Court, if the Librarian had in any given case been required by *subpœna* to produce them. At least, such is the case if, as we presume, a power similar to that which brings into an English Court the parson of the

parish, with the Parish Register of which he is the legal custodian, exists in the United States, as a Federal power, carrying execution in the District of Columbia, and capable of being exercised by the Federal Supreme Court. Pending the desired amendment in the Law, with the general propriety of which we fully concur, the *subpœna* course may, perhaps, deserve to be commended to the attention of our American cousins.

* * *

Conveyance of title in Copyright seems to be in an equally unsatisfactory condition in the United States. For there is no provision made for authenticating the instrument purporting to effect such conveyance. Here, again, the Librarian of Congress has adopted in practice what may be called a common-sense line, but it is one which, as the *Southern Law Review* points out, must fail at the point of authentication for record. The *Review* proposes an amendment in the Law, providing that deeds for Conveyance of Copyright should be acknowledged in a certain prescribed way, before certain officers, and certified by such officers in a certain prescribed way, and, further, that they should be executed in duplicate. Here again, as it seems to us, the proposed amendment might be simplified by providing that the Librarian of Congress should be the officer before whom such conveyances should be executed, and that he should thereupon himself certify them. This would surely afford the best possible guarantee against both forgery and personation.

* * *

An interesting question, connected with the important subject of Naturalisation, has recently been brought before the French Senate, as we learn from our contemporary, the *Journal de Droit International Privé*, Nos. VII.-VIII. for 1882. The point was raised on the action of the Prefect of the French Département du Nord, in placing on the lists

for military service a son of French subjects born to them in Belgium, and who had, in the terms of the Belgian Code, opted for Belgian nationality within the time prescribed by Belgian law. This act of option, it is to be observed, carries retrospective force in Belgium. According to Belgian law, therefore, the assumed French subject, claimed as liable to French military service, had never been a French subject at all, and France could have no right to draw for her conscription a Belgian subject, who was clearly liable to Belgian military service, the claims of which he had, it appears, satisfied, by the drawing of a number which exempted him. The case seems to be somewhat complicated, as regards the line taken by the French Courts, by the fact that the petitioner to the Senate, M. Carlier, was not the first of his family in whom the question had practically been raised. Two elder brothers of his had equally opted for Belgium, and their option had been held valid by the same Civil Court of Valenciennes, which held the youngest brother liable to service under French colours, and whose later view was confirmed by the Court of Appeal of Douay.

M. Carlier took the opinions of eminent French counsel on the point, one of them being that of M. De Folleville, Dean of the Faculty of Law in the University of Douay, and a Vice-President of the Association for the Reform and Codification of the Law of Nations. M. De Folleville, we understand, drew up a very elaborate opinion, taking a view adverse to the doctrine of the Court of Douay. At the same time, he did not advise an appeal, but rather that recourse should be had to Diplomatic action. M. Carlier, in pursuance with this advice, has presented a petition, which has been reported upon in the French Senate by M. Dieudé-Defly, and in terms of the report referred to the Ministry for Foreign Affairs, with a request for their careful attention thereto. The importance of the action taken by the Senate will at once be seen.

The Report upon which this reference has been made can scarcely fail to arouse a sense of the gravity of the questions involved, and we have no doubt that the able International Jurists who are attached to the Ministry will give it their fullest consideration. It is obvious that the position which the decision of the Courts of Douay and Valenciennes would assign to persons in the circumstances of M. Carlier is one fraught with the very gravest issues of life and death. For it cannot mean anything less than a twofold liability to being shot as a deserter, if war were at any time to break out between the two countries which claim such persons. And it can scarcely mean anything less than the perpetual liability to the dispute in time of peace of the passport under which persons so situated would naturally travel, viz., that of the country of their adoption. The possibilities of friction, amounting it may be to extreme tension, in the relations between the two countries are numberless, and they are also serious. It is, of course, possible to say that, in the case in question, Belgium being a neutral State, the worst difficulties cannot arise. But it cannot be denied that the neutrality of a country, however largely guaranteed, is capable of being violated, and in this particular case of Belgium that such violation does actually form a current subject of speculation in military and other circles and in the press, with however little basis as regards the two States pointed to as the probable violators.

It would be doubly pleasing, under such circumstances, to see this thorny subject treated by the French Ministry for Foreign Affairs purely as a question of International Law and of International Morality, entirely apart from any consideration of a possible state of things such as could not but be deprecated by Europe generally. At present, in a time of Peace, it is possible by an equitable adjustment of a knotty controversy to silence more than one doubt, and

to extinguish more sources of conflict than those actually visible. The Report made to the Senate draws pointed attention to the wide application of the "grave difficulties" which might arise from an International point of view under the recent doctrine of the French courts. And it very justly emphasises the special gravity of the question directly at issue, namely, Military Service. For it is equally capable of being raised in the opposite sense, as M. Dieudé-Defly points out, and the sons of Belgian parents, who may have opted for French nationality, will be capable of being claimed as liable to the Belgian conscription. Such complications, the Reporter continues, may very easily degenerate into an International conflict. And the process of degeneracy in such cases, we may remark, is usually only too easy and rapid. It is, we hope, of good omen for the happy solution of the important questions raised by M. Carlier's petition, that those questions should have been so fully and so temperately appreciated by the Reporter of the Committee appointed in the French Senate, and we shall look forward with interest to the result of the reference to the Ministry for Foreign Affairs.

* * *

Our valued Paris contemporary, the *Revue Générale du Droit*, has, we regret to record, suffered like ourselves by the death of one of its Editors, M. Edmond Labatut. Like our own case, the loss of the *Revue Générale* has been that of a worker in the prime of his intellectual life.

M. Labatut, who at his death on the 8th of July, 1882, was but thirty-eight years of age, and was thus four years younger than Professor Taswell-Langmead, had been one of the Editors of the *Revue Générale* from its foundation in 1877, and continued to take an active share in its conduct till within a very short time of his death.

His *Alma Mater* was the Law Faculty of Toulouse, where he graduated at an early age as Licentiate and Doctor. By

a felicitous act of recognition of his merits on the part of his own old master, M. Humbert, the Keeper of the Seals, it is with Toulouse that M. Labatut's memory must be associated in death, invested as he was at the time with the high and responsible functions of Vice-President of the Tribunal.

It was in the department of Roman Law that M. Labatut won his highest laurels as an author. His Essay on the "Roman Ædilitas in its Relations with the Modern Municipality," was crowned by the Academy of Legislation of Toulouse in 1865. He communicated to the same Academy an Essay on the Law of Alimentation in Rome, and to the Academy of Legislation a Paper on the *Curatores Rei Publicæ*. His acquaintance with Numismatics was shown by an article in a Belgian Review on the "*Cultus* of Cybele and Atys from Coins and Medals;" while his substantive works were dedicated to the "Principles of Warranty in Sale," and, most noticeable of all, a "History of the Roman Prætorship." He left unfinished a "History of the Penal System of the Romans."

The Procurator of the Republic, M. Delord, paid a high tribute to the character and ability of M. Labatut, on the occasion of his funeral. "All who knew him," said M. Delord, "remained his friends. A distinguished magistrate, he had obtained, while still young, a post which opened to him a brilliant future. He was above all a man who would do his duty: he was seen to preside in court almost down to the moment of being struck with his fatal illness."

So honest and zealous a worker must needs be sadly missed by those with whom he worked. Our contemporary has suffered a loss in which we ourselves can at this moment more especially sympathise. But we feel, as no doubt our contemporary feels, that the losses we have both suffered constitute a fresh call on our energies, alike in the *Revue Générale* and in the *Law Magazine and Review*.

Legal Obituary of the Quarter.

(England, Scotland, and Ireland.)

Archer, Edward Peter, Esq., Solicitor, late of Childer House, Stowmarket, Suffolk, aged 67. Admitted in 1845. *Dec.* 9.

Appleyard, Charles, Esq., Solicitor, aged 71. Admitted in 1834. *Dec.* 25.

Barton, Richard Bolton, Esq., LL.D., J.P., of Stour Lodge, Bradfield, Essex, and of Gray's Inn Esq., Barrister-at-Law, late Chief Magistrate of Bombay, aged 63. Dr. Barton, who was of Trinity College, Dublin, (B.A. 1844, LL.D., 1868), was called to the English Bar in 1850. He was eldest son of John Barton, Esq., of Dublin, and was J.P. for Essex. *Dec.* 27.

Boyle, James, of the Middle Temple, Esq., Barrister-at-Law, aged 76. Called in 1838. *Nov.* 14.

Bramwell, John, Esq., J.P., Recorder of Durham, aged 88. Mr. Bramwell, who was admitted as an Attorney in 1814, and practised in Durham, was an Alderman 1835-52, and four times Mayor. In 1860 he was appointed Recorder, and Steward of the Court Leet, and Court Baron of the City of Durham, for which he was also a magistrate. *Nov.* 25.

Carthew, George Alfred, Esq., F.S.A., M.A.I., Solicitor, of Milfield, East Dereham, aged 75. Mr. Carthew, who was admitted in 1830, was well known as an accurate and patient antiquary, being the author of a *History of Launditch*, and having nearly completed a History of Necton, Hale, and Braddenham, in Norfolk, which he was preparing for press at the time of his death. *Oct.* 21.

Crook, Richard Smethurst, of the Inner Temple Esq., Barrister-at-Law, District Registrar of the Court of Probate, Liverpool, aged 85. Called in 1830. *Dec.* 21.

Dolphin, Oliver P., of the King's Inns, Esq., Barrister-at-Law, aged 77. Called to the Irish Bar in 1833. *Nov.* 4.

Donnell, Robert, of the King's Inns, Esq., Barrister-at-Law, Crown Prosecutor for Co. Louth and for Drogheda, aged 40. Mr. Donnell, who was called to the Irish Bar in 1864, was author of an able Treatise on the Irish Land Act, 1870, besides having edited a volume of Reports of Decisions under the Act. He was a graduate of the Queen's University of Ireland, and was

Professor of Jurisprudence and Political Economy in Queen's College, Galway. *Dec.* 18.

DONNELLY, Thomas, Esq., Solicitor (Irel.), Dublin, aged 57. Admitted in 1847. *Oct.* 20.

DUKE, Francis Worge, of Lincoln's Inn, Esq., Barrister-at-Law, aged 49. Mr. Duke, who was called in 1858, and was son of the late William Duke, Esq., M.D., of St. Leonard's-on-Sea, was residing at Penang, Straits Settlements, at the time of his death. *Nov.* 28.

FITZGERALD, John Alexander, Esq., Solicitor (Irel.), Mountmellick, Queen's County, aged 61. Admitted in 1842. *Nov.* 13.

FOLEY, Denis, Esq., Solicitor (Irel.), Lismore, Co. Waterford. Admitted in 1846. *Nov.* 17.

FORD, William Henry, Esq., Solicitor, Portsmouth, aged 40. Mr. Ford, who was admitted in 1862, was son of the late Henry Ford, Esq., Solicitor, formerly Mayor of Portsmouth. *Nov.* 7.

FOURDRINIER, John Coles, Esq., Solicitor, Wanstead, aged 79. Admitted in 1826. *Nov.* 28.

FREER, Edward Hickman, Esq., Solicitor, Stourbridge, aged 50. Admitted in 1855. *Nov.* 14.

GAYLEARD, James, Esq., Solicitor, Spanish Town, Jamaica, aged 72. Mr. Gayleard's father was Hon. James Gayleard, President of the Legislative Council, Jamaica. *Dec.* 18.

HAWKINS, Edward, Esq., Solicitor, aged 30. *Jan.* 9.

HERBERT, John Maurice, M.A., F.G.S., of Rocklands, Herefordshire, and of Lincoln's Inn, Esq., Barrister-at-Law, Judge of County Courts for Monmouthshire, aged 74. Mr. Herbert, who was son of John Laurence Herbert, Esq., of New Hall, Montgomeryshire, was of St. John's College, Cambridge, (B.A., 7th Wrangler and 1st Cl., Classical Tripos, 1830, M.A., 1833), was called to the Bar in 1835. He held office at various times as an Assistant Tithe and Copyhold Commissioner, and as a Commissioner for enfranchising the Assessionable Manors of the Duchy of Cornwall. In 1847 he was appointed to the County Court Judgeship, which he held at the time of his death. Mr. Herbert was J.P., for Counties Hereford, Monmouth, Radnor, and Glamorgan. *Nov.* 3.

HILL, John William, M.A., of the Middle Temple, Esq., Barrister-at-Law, aged 50. Mr. Hill, who was of Trinity College, Cambridge (B.A., 1854), was called to the Bar in 1857.

The eldest son of John Hepworth Hill, Esq., Recorder of Pontefract, he had himself practised as a Conveyancer in Leeds. *Nov.* 25.

HILTON, Thomas J. R., of Glan-y-don, Colwyn, North Wales, and of the Inner Temple, Esq., Barrister-at-Law, aged 55. Called in 1862. *Jan.* 19.

JENKIN, Albert, of the Middle Temple, Esq., Barrister-at-Law. Called in 1847. *Dec.* 27.

JONES, Thomas Moreton, Esq., Solicitor, of Beaconsfield Lodge, Wimbledon, aged 67. *Nov.* 2.

KISCH, Simon Abraham, Esq., Solicitor, aged 59. Admitted in 1861. *Dec.* 28.

LANGRIDGE, William Kirby Johnson, Esq., Solicitor, Lewes, Clerk to the Lieutenancy for Sussex, aged 44. Admitted in 1859. *Nov.* 12.

LAWLESS, John, Esq., Solicitor (Irel.), of Leinster Lodge, Rathmines. Admitted in 1852. *Nov.* 10.

MARTIN, Rt. Hon. Sir Samuel, Kt., P.C., late one of the Barons of the Exchequer, aged 81. Sir Samuel, who was of Trinity College, Dublin (B.A., 1821; M.A., 1832; LL.D., 1857), was admitted at Gray's Inn, but migrated to the Middle Temple, by which Hon. Society he was called to the Bar in 1830. He then became a member of the Northern Circuit; Q.C. in 1843; and in 1847 was returned to Parliament for Pontefract, for which borough he sat till 1850, when he was raised to the Bench and knighted. In 1874 he resigned, and was sworn of the Privy Council. Sir Samuel Martin was son of the late Samuel Martin, Esq., of Culmore, Co. Derry. *Jan.* 9.

MEASURE, John, of Pinchbeck, Lincolnshire, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 85. Called in 1825. *Nov.* 25.

MEIKLE, John, Esq., Solicitor, aged 46. Admitted in 1867. *Nov.* 5.

MOORE, William Playters, Esq., Solicitor, aged 54. Admitted in 1855. *Nov.* 30.

NAPIER, Right Hon. Sir Joseph, Bart., P.C. (Irel. and Great Britain), D.C.L., LL.D., formerly Lord High Chancellor of Ireland, aged 77. Sir Joseph, who was youngest son of William Napier, Esq., of St. Andrews, Co. Down, who claimed to represent the Napiers of Luton Hoo, Baronets (cr. 1612), was a pupil of James Sheridan Knowles at the Belfast Academical Institution, from which he proceeded to Trinity College, Dublin, in 1820, distinguishing himself as a mathematician in the first

year of his University life. He graduated as B.A. in 1825, M.A., 1828; and received the degree of LL.D. from his own University in 1851, and that of D.C.L. from Oxford in 1853. During his undergraduate career Sir Joseph co-operated with the late Chief Justice Whiteside and Dr. W. Cooke Taylor in reviving the famous Trinity College Historical Society, of which he became President in 1870. He was called to the Irish Bar in 1831, at a time when its roll contained many illustrious names. In 1843-4 he was retained for the Crown in the O'Connell State trial, and became Q.C. (Irel.), 1844. In 1848 he was returned to Parliament for his University, and was re-elected in 1857. In 1852 he became Attorney-General, a Privy Councillor for Ireland, and Honorary Bencher of the King's Inns, and in 1858 was appointed Lord Chancellor of Ireland. In 1867 he was created a Baronet, and was elected Vice-Chancellor of the University of Dublin, which high office he held till 1880. In 1858 Sir Joseph had been President of the Jurisprudence Department of the Social Science Association at its Dublin Congress held that year, as was his successor in the Irish Chancellorship, Dr. Ball, at the Congress of 1881. In 1868 Sir Joseph Napier was sworn of the Privy Council for Great Britain, and was appointed a member of the Judicial Committee. He also served on the Commission for the Publication of the Ancient Laws of Ireland, and was a member of the Board of National Education. In the Law, Politics, and Religious Polemics of his day, says our contemporary the *Irish Law Times*, Sir Joseph Napier won a conspicuous renown, and in each capacity deserves to be held in remembrance among the great characters of Irish public life. *Dec.* 9.

NEWMAN, Richard, Esq., Solicitor, Hadleigh, Suffolk, aged 68. Admitted in 1839. *Jan.* 16.

NOLAN, Thomas, Esq., of Albert Park, Melbourne, Victoria, formerly a Solicitor in Dublin, aged 76. Mr. Nolan, who was admitted in 1826, practised in Dublin till 1858, when he went out to Australia, and entered upon a fresh and highly successful professional career at Melbourne, where one of his nephews now occupies a seat on the Bench. *Nov.* 2.

O'DRISCOLL, William Justin, B.C.L., of Belcourt, Bray, Co. Wicklow, and of the Inner Temple, Esq., Barrister-at-Law, aged 35. Mr. O'Driscoll, who was called to the English Bar in 1871, was of St. John's College, Oxford (3rd. Cl., Moderations, 1867; B.A., 3rd Cl., Jurisprudence and Modern History, 1869). *Dec.* 18.

OPPENHEIM, Morris Simeon, of the Middle Temple, Esq., Barrister-at-Law, aged 58. Called in 1858. *Jan.* 3.

PORTER, Frank Thorpe, M.A., J.P., of the King's Inns, Esq., Barrister-at-Law, formerly a Divisional Magistrate for Dublin, aged 80. Mr. Porter, who was of Trinity College, Dublin (B.A. 1823, M.A., 1832), was called to the Irish Bar in 1827, and, in early life, says the *Irish Law Times*, citing the *Daily Express*, was "an active politician, and one of the most earnest supporters and advocates of Mr. O'Connell. He was a sound lawyer, and also possessed a literary taste and a sense of humour which often brightened the gloom of the Police Court with a genial flash of wit and drollery." *Nov.* 24.

RASHLEIGH, Philip George, Esq., Solicitor, aged 59. Admitted in 1849. *Oct.* 26.

READE, George William, Esq., Solicitor, Congleton, aged 54. Admitted in 1853. *Jan.* 22.

REXWORTHY, James, Esq., Solicitor, aged 37. Admitted in 1874. *Nov.* 13.

RICHARDSON, Robert, Esq., Solicitor, Bradford, aged 51. Mr. Richardson, who was admitted in 1853, was for some years Vice-Consul for the United States in Bradford. *Nov.* 16.

RUTTER, Alfred, Esq., Solicitor, aged 55. Admitted in 1851. *Oct.* 25.

SLADE, John, Esq., Solicitor, formerly of Yeovil, aged 83. Admitted in 1821. *Dec.* 12.

TASWELL-LANGMEAD, Thomas Pitt, B.C.L., of Lincoln's Inn, Esq., Barrister-at-Law, and of the Inner Temple, Professor of Constitutional Law and History in University College, London, formerly Tutor on Constitutional Law and Legal History to the Four Inns of Court, aged 42. Mr. Taswell-Langmead, who had since 1875 been Editor of the *Law Magazine and Review*, and of whom we give a fuller memoir elsewhere in the current number, was an *alumnus* of King's College, London, and passed the first B.A. examination at the University of London, whence he proceeded to St. Mary Hall, Oxford. B.A., 1st Class, Jurisprudence and Modern History, Mich. Term, 1866. He was Stanhope Prizeman, 1866, Vinerian Law Scholar in the University, 1867, B.C.L., 1869; having also held the Tancred Studentship at Common Law in Lincoln's Inn. His reputation as an author was made by his *English Constitutional History from the Teutonic Conquest to the Present Time*

(Stevens and Haynes), first published in 1875 and now in a second edition. *Dec.* 8.

TEMPLE, John Alfred, Esq., Solicitor, of Woodvale, East Dulwich, aged 46. Admitted in 1860. *Nov.* 9.

THOMAS, Edmund, of the Middle Temple, Esq., Barrister-at-Law, aged 40. Mr. Thomas, who was called to the Bar in 1865, was second son of the late Mr. Serjeant Thomas. *Dec.* 8.

Reviews of New Books.

Asiatic Studies, Religious and Social. By Sir ALFRED C. LYALL, K.C.B., C.I.E. John Murray. 1882.

A Digest of Civil Law for the Punjab. By W. H. RATTIGAN, of Lincoln's Inn, Barrister-at-Law. Second Edition. Allahabad: "Pioneer" Office. 1882.

The Negotiable Instruments Act [*India*], 1881. Edited by M. D. CHALMERS, M.A., of the Inner Temple, Barrister-at-Law. Calcutta: Thacker, Spink and Co. London: W. Thacker and Co. 1882.

The Negotiable Instruments Act, 1881. *The Indian Trusts Act*, 1882. *The Transfer of Property Act*, 1882. *The Indian Easements Act*, 1882. (Official Publications of the Indian Government, received from India, 1882).

The number and the interest of the various works and Government publications relating to India which we have received during the past year, may be seen at a glance from the above enumeration, although, in point of fact, it is not exhaustive, even of recent publications; the very valuable works of Mr. J. H. Nelson and Mr. R. M. A. Branson, as well as the *Indian Jurist Digest*, having already been noticed by us.

It would so obviously be impossible to do justice to the ample materials for the study of Indian legal problems, now in our hands, in the short space which is all that we could give them among our Reviews of current legal literature, that we propose to devote a separate article to the subjects embraced in the present list, at as early a date as may be possible consistently with the engagements already pressing for fulfilment.

But we cannot even sketch out thus faintly the nature of the

questions to which we hope shortly to give our most earnest attention, without expressing the gratification which we have felt in noting the zeal and the ability manifested alike by the Indian Government and by private individuals of high standing and long official experience, in their respective endeavours to grapple with the complex problems of Indian Law and Indian Administration. It seems to us a happy conjunction of forces that has brought to the front among the recent additions to our Indian legal literature such workers as Sir Alfred Lyall, Mr. M. D. Chalmers, Mr. W. H. Rattigan, Mr. J. H. Nelson, and Mr. R. M. A. Branson. The area which they cover in their several works is so extensive and so varied, that no one of them trenches in any way on the province of the other, but rather each throws a special light on some points, or illustrates the work of some one or more of his fellow-labourers. We really could not have afforded to have done without the strongly marked individuality of the suggestions, the warnings, the aspirations of Sir Alfred Lyall and Mr. Nelson. And as little could we have spared the singularly interesting attempt so boldly made by Mr. Rattigan, in drawing up a Digest of Principles which he believes to be common to Hindu and Mohammedan Law in the Punjaub, or the valuable co-operation afforded at home by Mr. Chalmers to the advance of Codification in India. There are not a few lessons which might be learned by our legislators and would-be Codifiers in England, if they made themselves acquainted with the progress of Administration and Codification in India.

Treatise on Master and Servant, Employer and Workman, and Master and Apprentice. By PATRICK FRASER, one of the Senators of the College of Justice. Third Edition. By WILLIAM CAMPBELL, M.A., Advocate. T. and T. Clark, Edinburgh. 1882.

When the last edition of this work was brought out in 1872, its learned author had not attained his merited promotion; since then he has been Dean of the Faculty of Advocates, and has become a Senator of the College of Justice, and the task of bringing out the third edition has been allotted to Mr. William Campbell, of the Scottish Bar. The editor assures us in his preface, that though much has been re-written, yet the new portion was submitted for the approval of Lord Fraser, and that wherever Legislative changes have not interfered, his Lordship's original handiwork remains untouched. Mr. Campbell has performed

his duties with care and skill. That it was necessary to introduce much fresh matter is clearly shown by the statutes passed since the last edition, which have been from time to time demanded by new social theories, and by a change in public opinion as to the relations of master and servant. The editor discusses a point under the Employers' Liability Act, 1880, which was recently mooted in the Queen's Bench Division, namely, whether the workman is deprived of his Common Law remedy against his employers, as to matters to which the Act applies. Without deciding the question, the Court seemed to intimate their opinion that he was so deprived: Mr. Campbell, on the contrary, thinks he is not, and without being at all confident on the subject, we are rather inclined to agree with Mr. Campbell. We notice with pleasure, the large space devoted to English case law, which, though not binding as an authority on the Scotch courts, is treated in this leading text-book not only with respect, but as supplying principles which might well be followed by the administrators of justice across the border. If only the English text-writers, and even the English Bench, did not think it almost beneath their dignity to be assisted by foreign jurists, their equals in culture and legal learning, we should not have been left so long groping after accurate and just principles on many doubtful points. The plan of the treatise is simple and lucid. The appendix contains the text of the statutes relative to employer and workman, and master and apprentice, treated of in Part III., and a full Index (a much better one than that of the previous editions), with useful cross references, adds to the value of this excellent book, which fully sustains the high reputation of Lord Fraser, and does no less credit to the editor and to the publishers.

The Law of Master and Servant. By JOHN MACDONELL, M.A., of the Middle Temple, Barrister-at-Law. Stevens and Sons. 1883.

This is the first English work on the subject of Master and Servant which has appeared for nearly thirteen years, viz., since the last edition of Mr. Manley Smith's book. On the whole, we congratulate Mr. Macdonell on his enterprise; if he had sustained throughout his treatise the high standard of excellence to which he attains in parts, we should have had nothing but praise for him. It appears to us, in fact, that the

author has been over zealous in his struggles to be concise; and that his book suffers in consequence, and is rather a digest than a text-book. Much labour must have been spent over it, and it contains an enormous amount of matter, but which, unfortunately, is not always in a shape for ready reference, the practical test of a really useful text-book. The absence of marginal notes is to be regretted, and the Index is not so full as it might be. There are, however, certain improvements introduced by Mr. Macdonell which other text-writers might follow with good results; *e.g.*, the sharp contrast which he marks by contiguity of position in the case law on those points which, from their nature, or the inconsistency of judicial decisions, have a tendency towards merging their border lines: (thus, on pages 172—5 we find stated in parallel columns the cases showing what does and what does not amount to a yearly hiring). This system is carried out in a novel feature of the book, an appendix to nearly each chapter. If these cases were somewhat expanded, and even roughly classified, we think their utility would be materially increased. We are glad to note the recognition on Mr. Macdonell's part of the value of Scotch and American authorities, where the English case law is silent; and last, but not least, the utter absence of "padding," for the statutes, though taking up a considerable portion of the book, are all of them closely germane to the subject-matter. The propositions of law enunciatad in the pithy sentences or rules, given as annotations to the statute law, seem to be carefully and correctly stated, and the author's criticisms on various cases are sound and concise. Care and industry are conspicuous in Mr. Macdonell's book, and on the whole we can confidently recommend it to the Profession.

Principles and Precedents of Modern Conveyancing. By C. CAVANAGH, B.A., LL.B. (London), of the Middle Temple, Barrister-at-Law. Waterlow and Sons. 1882.

In this work Mr. Cavanagh has placed before the reader a very useful compendium of the law relating to the Conveyance of property. It is divided into three parts. The first treats of Conveyancing *inter vivos*, of Conveyancing *ex testamento*, and of the modifications introduced into the subject by recent legislation. Part II. gives us some of the principal Conveyancing Statutes of the last ten years, with notes. The last part of this treatise

contains a small collection of useful precedents for Conditions of Sale, Agreements, Conveyances on Sale, Mortgages, Leases, Disentailing Assurances, Appointments of New Trustees, Settlements, Wills, and miscellaneous forms. An Appendix contains other Conveyancing Statutes passed in 1882, with notes. We cannot but think that it would have made his book more complete and practical if the author had placed *all* the Statutes together, either in the Second Part or in the Appendix, instead of dividing them into different groups. Mr. Cavanagh's work, taken as a whole, is decidedly well done, and we can confidently recommend his book as one likely to prove useful, both to students and to practitioners.

Grant's Treatise on the Law relating to Bankers and Banking Companies, with an Appendix of Statutes. Fourth Edition. By CLAUDE C. M. PLUMPTRE, of the Middle Temple, Esq., Barrister-at-Law. Butterworths. 1882.

Mr. Plumptre has taken up Mr. Fisher's editorial work, on the bringing down to date of a revised issue of Grant's well-known Treatise on Banking. The subject is one necessarily of far-reaching importance in our country and in our day. Much legislation has already been devoted to it, but more may be expected when the omnipotence of Parliament shall see fit to turn its attention in that direction.

We should have been glad, if in some portion of his revision of Grant, Mr. Plumptre had given us a little more insight into his own views, and something by way of comment on points which seem to us to call for it. When Mr. Plumptre tells us the state of the law as to cashed cheques, with due reference to the decided cases, we should have welcomed some expression of his opinion on the non-return of such cheques to their customers, a practice unquestionably followed by some London bankers, without any agreement to that effect as between them and their customers. We apprehend that such retention of cashed cheques, in the absence of any agreement, could not be sustained, if even it be not distinctly illegal.

Again, *Suffell* v. *The Bank of England* appears only in a short note, as one of the *Addenda* to the present edition. We greatly regret that Mr. Plumptre should not have given us, even by way of *Addendum*, his views on that very remarkable, and in the opinion of many, very unsatisfactory case. For our own part,

it seems to strike a heavy blow at the confidence which the public has hitherto entertained for Bank of England notes. We do not doubt that Mr. Plumptre's good work will be appreciated so as to enable him ere long to state his views on these and other points in a fresh revision of Grant's standard Treatise on Banking.

The Justices' Note-Book. By. W. KNOX WIGRAM, of Lincoln's Inn, Barrister-at-Law, J.P. for Middlesex and Westminster. Third Edition. Stevens and Sons. 1883.

Mr. Wigram's book has received substantial tokens of approbation in the rapidity with which new issues have been called for. Demand and supply must in such cases be correlative terms, as nearly as it is possible for author and publisher to make them so. Otherwise, we are not sure whether the learned author would not have done better to have waited a short time, in order the better to take note of the possible operation on this subject of some of the recent Statute Law. The Married Women's Property Act, 1882, for instance, must, it seems to us, ere long produce some effect upon magistrates' case law, not improbably, in the first instance, leading to some test cases, and it would have enhanced the value of the new edition of so popular a *vade-mecum* as Mr. Wigram's if it had contained some reference to decided cases under the new *régime*. For in practice, as yet, we cannot tell where the effect of our great change of front will first be felt. That it will be felt, and that soon, cannot be doubted.

A Treatise on the Power and Duty of an Arbitrator, and the Law of Submissions and Awards. Sixth Edition. By FRANCIS RUSSELL, M.A., Barrister-at-Law, and HERBERT RUSSELL, Barrister-at-Law. Stevens and Sons. 1882.

The sixth edition of this well-known and valuable work is now before us. The authors have endeavoured to bring the book into harmony with the existing practice of the law, as modified by the Judicature Acts. The forms for submissions, proceedings during a reference, awards, and proceedings on the same, have been revised and added to. It is difficult, even by a microscopic examination, to discover any fault, so well has the scheme of the work been carried out. We may, however,

mention that a certain printer's error of the former edition has been repeated on page 192 of the new book. *Johnstone* v. *Cheape* is quoted as being in 5 *Dow.*; a reference likely to cause the reader to think it an abbreviation for 5 *Dowling's Reports*, the reference in reality being to 5 *Dow's Reports*. The full stop after the name *Dow* should, to obviate confusion, give place to a comma in the next edition.

A more serious error occurs at p. 680, where, in stating that an award cannot be attacked for a false recital, the case of *Trew* v. *Burton* (1 C. & M. 533) is quoted in support. The case quoted does not, however, support the statement, for the report is limited to an *immaterial* mistake in the recital. But it is fair to state that the danger is to some extent lessened by a further reference of the authors to Pt. II., ch. 5, s. 2, p. 263 of their work, where the true effect of the report is correctly set out. An Appendix of Statutes relating to arbitration considerably enhances the value of this useful book.

Common Precedents in Conveyancing, adapted to the Conveyancing Acts, 1881, 1882, and the Settled Land Act, 1882, &c., together with the Acts, an Introduction and Notes. By HUGH M. HUMPHRY, M.A., of Lincoln's Inn, Barrister-at-Law. Second Edition. Stevens and Sons. 1882.

The present edition of this work is a distinct improvement on its predecessor. The truism of the preface, however, that it is impossible to provide a precedent for every contingency of life is hardly justification for devoting nearly half of a volume of some 400 pages, conspicuously entitled "Common Precedents in Conveyancing," to a simple reprint of the Conveyancing Acts of 1881 and 1882, and the Settled Land Act 1882, with most occasional comments on a few sections. The Solicitors Remuneration Act, 1881, and the general order thereunder, are given as mere reprints. The precedents are directed, with some ingenuity, to the usual conveyancing routine, and intentional variations on the former practice are pointed out with reference and reason. The novel power suggested in Precedents XC. and XCI., by which trustees of a term under one settlement would, on any dealing with the estate by a tenant for life under another, be able to release any part of the entire estate from a charge, perhaps not payable until some distant date, when the remainder of the land to which alone the charge had been transferred

might be almost valueless, is not one, we think, which any prudent settlor would adopt. To give such a power to the tenant for life himself, as is also suggested by the author, would place in his hands a weapon which human nature could hardly fail to abuse, with an appearance of excellent intentions. That "settled estates, even allowing for mortgages upon them, are generally of large value compared with the amount of the portions," is hardly the experience of those who have had to deal with estates which have been held by one family for more than a generation. The Married Women's Property Act, 1882, does not, in the author's opinion, "seem to affect or to be intended to affect the existing form of a marriage settlement," but it is already not infrequent in practice to require a woman on her marriage to make such a settlement in favour of the children, and even of the husband, as the husband was formerly expected to make in favour of the children and wife, no more reliance being placed on the wife for making a proper provision than was formerly placed on the husband. The arrangement and type spacing of the book are so clear as almost to render an index unnecessary.

Statutes Relating to Settled Estates, including the Settled Estates Act, 1877; Settled Estates Act Orders, 1878; Settled Land Act, 1882; Improvement of Land Act, 1864; and the Limited Owners Residences Acts, 1870 and 1871. With Introduction, Notes, and Forms. By JAMES W. MIDDLETON, B.A., of Lincoln's Inn, Barrister-at-Law. Third Edition. London: Stevens and Sons. 1882.

The rapidity of recent legislation in the matter of settled estates has compelled Mr. Middleton to advance from "a desire to produce," in the first edition of this work, "a practical edition of the Settled Estates Act, 1877," to a hope that its third edition, after an interval of less than four years, will be "a convenient and useful manual of the law relating to the statutory powers of limited owners in dealing with land under settlement." The former editions have been found useful in practice, and, if the general tendency of this new edition is, as we think, rather to point out the novelties introduced by the latest Act, than to present comprehensively what is now to be the principle of the law as to settled estates, the book will probably on that account find more favour with those who have worked with the former editions, and with the average

practitioner, who has neither time nor ability to apply principles, but is chiefly concerned to avoid technical pitfalls. Although such a general tendency is, to some extent, necessary in a book professedly based on the technicalities of statutes, there is always opportunity in an introduction to supplement it by an accurate statement of principles and doctrine; and we hope that in a future edition of this work Mr. Middleton may re-write the present introduction, and give a general sketch of the powers of the various persons and bodies concerned in settled land, in the place of the present summary extracts from the Statutes and occasionally incomplete statement of the effect of the new Act. The statement on page 2 that the new Act does not take away, abridge, or prejudicially affect any subsisting power, is, having regard to sec. 56, sub-sec. 2, somewhat misleading; whilst the reference, on page 15, to the necessity for the consent of two trustees, omits all allusion to the provision, not unlikely in some cases to be adopted in practice, that a contrary intention may be expressed in the settlement. The book preserves, however, in its new form, the practical characteristics of its first issue, whilst its simplicity of arrangement, and index of well-chosen titles, will save much time to the practitioner who is desirous of finding statutory enactment or form of procedure, with comments by a decidedly competent critic. The authorities cited are brought down to November last, and modern requirements are duly consulted by the references being given not only to the long-travailed productions of the Incorporated Council, but also to the various contemporaneous reports. The extraordinary delay, until the last week of 1882, of the issue of the official rules and forms destined to come into use on January 1st, 1883, is much to be regretted; but their addition to Mr. Middleton's work would have materially delayed the publication of what is, we think, one of the best among the many competing handbooks on the Settled Land Act of 1882.

Principles of the English Law of Contract, and of Agency in its relation to Contract. By Sir WILLIAM REYNELL ANSON, Bart., D.C.L., of the Inner Temple, Barrister-at-Law, Warden of All Souls' College, Oxford. Second Edition. Oxford: Clarendon Press. 1882.

That this book has met with the success we foresaw in store for it two years ago, and which it richly deserves, is apparent

from the fact that the first edition has had a rapid sale. The Vinerian Reader has become the Warden of All Souls; and his book, originally designed for students, has advanced to the dignity of a text-book which we can most cordially recommend, not merely to the students of the Inns, but also to the practising members of the profession. Besides many minor but not unimportant additions and corrections, the chapter on "Offer and Acceptance" and the Part (VI.) relating to Agency have been elaborately developed and re-written, and they have now become very valuable features in the book. The appearance of the third edition of Mr. Pollock's Treatise on Contracts since the publication of the first edition of the work now under review, and the criticism on some of the propositions therein contained, have led the author to reconsider, and in some places to modify, those propositions; notably in the case of offers or acceptances communicated through the medium of the post, the law on which difficult and complicated subject is now succinctly and accurately stated. The methodical treatment adopted leaves nothing to be desired and contributes much to ease of reference. Such treatment is, indeed, essentially necessary in a book dealing with a branch of the Common Law which is still far from complete, and which leaves much, even now, to the writer's ingenious deduction of principle from precedent. In cases of great difficulty and apparent conflict of authority, the author is careful to point out possible and probable distinctions; as an instance of this we may notice the handling of two important decisions, viz., *Byrne* v. *Van Tienhoven* (L.R. 5 C.P.D. 349) and *Dickenson* v. *Dodds* (L.R. 2 Ch.D. 463).

Turning to Agency, we cannot but regret that Sir William Anson has not been bold enough to suggest some term sufficiently accurate to designate that "other party" who enters so largely into the necessary discussions on the subject. "Other party" is, as the learned writer himself recognises, so cumbersome, and often so confusing, that were it only for the sake of the students to whom the Lectures upon which the book is based were originally delivered, it would have been worth while to coin a name. The important case of *Mollett* v. *Robinson* (L.R. 7 C.P. 111; 7 H.L. 802), and its bearing on the relations of Stockbroker and Customer, has been discussed at length in the pages of this *Review;* we should have been glad to have seen a more elaborate analysis of the case than is given on page 338. Elaborate analyses do not, perhaps,

come within the province of a book which aims above all things at conciseness; nevertheless, the subject of termination of the agent's authority by the death of his principal merits more than the very short paragraph devoted to it. The parallel between *Collen* v. *Wright* (7 E. & B. 301; 8 E. & B. 647) and *Drew* v. *Nunn* (L.R. 4 Q.B.D. 684) might have been developed with advantage; it has an important bearing on the power of a Court administering a system of Common Law.

We have noticed a few passages rather loosely constructed, as, *e.g.*, the use of the word "may" in line 7, page 335; on which page, moreover, the third marginal note is out of its place; these and certain slight typographical blemishes will doubtless be removed in the next edition.

We thus gladly commend Sir William Anson's book to the Legal Profession. We commend it also to the attention of Law publishers generally, to whom the Clarendon Press has set an excellent example; the Index to the work before us is a treat to weary eyes.

The Law of Municipal Corporations, containing the Municipal Corporations Act, 1882, and the Enactments incorporated therewith, with a Selection of Supplementary Enactments, including the Electric Lighting Act, 1882, &c. By J. M. Lely, Esq., Barrister-at-Law. Stevens and Sons: H. Sweet. 1882.

In the present volume, which he rightly entitles The Law of Municipal Corporations, Mr. Lely carries out the principles upon which he has proceeded in his *Statutes of Practical Utility*, and other well-known works. We find him here, as ever, at once brief and to the point in his notes and in his historical summaries of the law with which he is dealing. It would have been possible, of course, and to some editors the opportunity would have been irresistible, to have prefaced the consideration of the Law of Municipal Corporations as it is by a lengthy account of the law as it was. And such an account might, no doubt, be written with advantage as a separate disquisition. As a mere preface to the law which now governs the two hundred and forty-six towns placed under the Act of 1882, it would have been cumbersome. Nevertheless, the fact remains that the law of our Municipal Corporations is an integral part of the History of England, and, in point of fact, we should like

to see the new legislation studied, along with that of the Middle Ages and of later days, as part of the continuous Legal history of this country. The Municipal Corporations of England should be followed from the *Municipia* established under the Roman domination, through the gradual restoration of Municipal life which followed the first confusion of the Teutonic invasion, onward through the more highly organised system of the Norman and Angevin kings to their mediæval zenith in the Fourteenth Century. The importance of Municipal Corporations in the Middle Ages can scarcely be over-estimated. The debt which we owe to them as powerful aids in the growth of freedom and the spread of civilisation throughout Western Europe should never be forgotten. It is well to remember also, what Mr. Lely's work serves to bring forcibly before us, that in the present conditions of English life, the importance of our towns is great and increasing. Mr. Lely's book unfolds for us one of the latest chapters in the history of our Municipal Corporations, and it is one deserving of the most careful study by the Constitutional Historian as well as by the Jurist and the Practitioner.

Municipal Corporations Act, 1882, and Provisions of the Ballot Act and Corrupt Practices Prevention Acts applicable to Municipal Elections, and other Statutes, with Notes. By HUGH OWEN, Barrister-at-Law. Knight and Co. 1883.

The legislation with which the above work deals is necessarily creating a literature of its own, in accordance with existing practice. Mr. Hugh Owen, who is already well known in this field of editorial labour, and whose previous publications have met with considerable favour, devotes himself in the present volume very closely to the text of his leading Act, and the relative portions of the statutes bearing on his subject. He gives us no introduction save a brief Preface, but enters at once upon the consideration of the Act itself. His annotations are, in not a few parts of the book, remarkably full, perhaps somewhat too full, indeed, for these days of hurry. But counsel who may be called upon to give opinions on the many points likely to arise under the Act will forgive this fault, if it be a fault, for the sake of Mr. Owen's elaborate setting forth of material illustrative of his text, both as regards decided cases and statutory provisions and forms. In one of these notes, at

p. 142, the learned editor's printers seem unquestionably to have committed a slight but curious error, very unusual on their part, in setting up the Oath of Allegiance. The text should surely have run, "Our Sovereign Lady, Queen Victoria," not as given, "Our Sovereign, Lady Queen Victoria," or else the Promissory Oaths Act, 1868, must be a somewhat odd example of even Parliamentary English, though we must admit that the standard of the Legislature might with advantage be raised.

The minute point to which we have adverted only sets in relief the very high general excellence of the manner in which the Publishers have brought out Mr. Owen's convenient and useful manual of the Municipal Corporations Act.

The Law Student's Annual, containing the questions with answers to the Solicitors' and Bar Final Examinations, 1881-2, a list of books suggested for students, &c. Edited by JOSEPH A. SHEARWOOD, of Lincoln's Inn, Esq., Barrister-at-Law. Stevens and Sons. 1882.

The scope of this book, which we hope to see firmly established as an Annual, is far wider than the mere giving of the several examination questions with their relative answers. It embraces a considerable variety of other matter, both suggestive and critical, likely to be of use to the student for either branch of the legal profession. Of some of the learned Editor's criticisms, indeed, it may be said "*rem acu tangunt.*" That the existing Roman Law Pass Examination for the Bar is a very unsatisfactory one, the examiners themselves would probably not deny. Mr. Shearwood has, no doubt, very good reason for believing that it is treated by the mass of students as an extra bore, to be crammed up for somehow, without the slightest view to acquiring any real knowledge of use in after life. This is, we feel sure, only too true a representation of the state of the case. It could hardly be worse. We altogether doubt the utility of the examination, in its present shape, under the best of circumstances. Nothing short of the study of the Institutes as a whole is satisfactory, to our mind, and that could probably only be exacted as a final subject. Mr. Shearwood says that Latin is itself a hindrance to many students for the Bar. Where they enter late in life, this may no doubt be so, but the difficulty in such cases might be met by an alternative. We should be very unwilling to see the

last fragment of the "Humanities" disappear from the examinations for the English Bar. For the Honours student, of course, a knowledge of Roman Law is really indispensable as a scientific basis for his jurisprudence.

We are glad to find that Mr. Shearwood appreciates the value to the student of our Quarterly Digest of all Reported Cases. We receive frequent testimony of its value to the practitioner, and we always felt that students ought to profit by it, for their purposes, no less directly than the practitioner. In his next issue, we apprehend, Mr. Shearwood will not speak of Sir William Anson's book on *Contracts* as one of the *smaller* works on the subject, and he will, no doubt, correct the ingenious misprint in the account of the Gray's Inn Scholarship, on p. 130. We do not quite understand Mr. Shearwood's doubts in the answer which he prints to the question in Ecclesiastical Law, on p. 78. The rubric makes absolutely no distinction between Sundays and Ferial days, and in neither case specifically mentions any place for saying matins or evensong. But both Offices are clearly what the Articles intend by the expression "Publick Prayer," and "Ministering in the Congregation." And if Baptism be ministered, as directed, after the Second Lesson, it is hard to see how the Font could be reached without an unauthorised interruption of the Office, and a procession from Parsonage to Church, if the Church be not the appointed place for "Publick Prayer" in the Church of England.

The Revenue Acts, 1880, 1881, so far as they relate to the New Death Duties imposed in respect of Personal Estate. By ALFRED HANSON, of the Middle Temple, Esq., Barrister-at-Law, Controller of Legacy and Succession Duties. Stevens and Haynes. 1883.

It is no small advantage when the persons officially most competent to deal with them, take up the consideration of the special subjects with which daily practice makes them so familiar, as is necessarily the case with the work before us and its author.

Mr. Hanson embodies in his present handy volume a considerable amount alike of clear information as to details, and of illustrative matter bearing on his subject of interest to the public generally. It seems odd to read, in the peculiar English so frequently invented by Boards and Government Departments,

of regulations concerning a "female testatrix" (Appendix p. xxxi). That there ever could be a *male* "testatrix" could scarcely wittingly have entered into the heads of ordinary persons. For such solecisms, of course, Mr. Hanson is in no way responsible. His own work is free from them, and his book may be commended, both as a supplement to his larger treatises, and as an independent guide to the Revenue Acts of 1880 and 1881.

Snell's Principles of Equity. Intended for the use of Students and the Profession. (Sixth Edition.) To which is appended an *Epitome of the Practice in Equity.* (Third Edition.) By the late EDMUND T. H. SNELL. Edited by ARCHIBALD BROWN, M.A., B.C.L., of the Middle Temple, Esq., Barrister-at-Law. Stevens and Haynes. 1882.

This long established and deservedly popular Manual has taken a new departure, commensurate with the importance of the recent legislative changes which have brought about in so many respects what is called the "Prevalence of Equity." Much of the old treatises here fused required careful handling to adapt it to the new state of things. This task, which Mr. Archibald Brown first undertook in 1877 he has continued to fulfil in a manner which should make the new edition a welcome substitute for its predecessors, whose good work is done, and which are entitled to an honourable retirement. Mr. Brown devotes some sixty pages to the legislation affecting Married Women.

In Book II. he presents us with a recasting of the "Practice in Equity," first introduced by him in the fourth edition of the Principles. And here the student reader should have his attention specially directed to the note on p. 612, which explains Mr. Brown's method of using Roman and Arabic numerals, and square brackets to distinguish the Orders and Rules of Court, and the matter in Book II. relating to the Common Law Division. At pp. 768-9 there is a useful Tabular Statement of the Proceedings in an Action.

Taken altogether, both in regard to its matter, its arrangement, and its typography, the sixth edition of Snell's *Principles of Equity* justifies the continuance of the favour with which the previous editions have been received on both sides of the Atlantic, as a text-book at Osgoode Hall, as well as among students in our own Inns of Court. In his next revision, we

hope that Mr. Brown will see his way to giving us the references to decided cases in all the principal Reports, or add the citation of the *Law Magazine and Review Digest*, instead of referring almost solely to the slowly issued Reports of the Incorporated Council.

A Concise Treatise upon the Law of Bankruptcy. By EDWARD T. BALDWIN, M.A., of the Inner Temple, Barrister-at-Law. Stevens and Haynes. 1883.

This is an excellent book. That it has found favour with the profession may be concluded from the fact that, the first Edition having been published in 1879, a third is now called for, a year only having elapsed since the publication of the second Edition.

We have on previous occasions noticed this work favourably, and we are glad to acknowledge that it improves with each edition.

It is an eminently practical treatise, and at once concise and exact. In the present Edition the author has incorporated with the text the provisions of the Bills of Sale Act, and has also referred to the various provisions bearing on the subject of Bankruptcy contained in the Married Women's Property Act, 1882, and the Bills of Exchange Act, 1882, a Codifying Act which, it may fairly be anticipated, will prove of the highest usefulness. The references to these Acts, and the settlement of the Law by new decisions have necessitated additions to the text, all which appear to have been made with skill and judgment.

The index, a most important though frequently much neglected part of a work, appears to have been carefully compiled, and the notes, besides referring to authorities, contain matter which shows the care and attention which the author has bestowed upon his work, in order to make it complete, and to bring it down to the present time.

We have no doubt that Mr. Baldwin's book will be found, alike as a guide and as a work of reference, most useful to both branches of the Legal Profession.

On the Rise and Growth of the Law of Nations, as Established by General Usage and by Treaties, from the Earliest Times to the Treaty of Utrecht. By JOHN HOSACK, of the Middle Temple, Esq., Barrister-at-Law. John Murray. 1882.

International Law, Private and Criminal. By Dr. L. BAR, Professor in the University of Göttingen. Translated by G. R. GILLESPIE, Advocate at the Scottish Bar. Edinburgh: W. Green. London: Stevens and Haynes. 1883.

The Institutes of the Law of Nations. A Treatise of the Jural Relations of Separate Political Communities. By JAMES LORIMER, LL.D., Regius Professor of Public Law and of the Law of Nature and Nations in the University of Edinburgh. W. Blackwood and Sons, Edinburgh and London. 1883.

In these three works, which have all quite lately issued from the press in London and Edinburgh, we are glad to trace an almost simultaneous and necessarily independent series of testimonies to the increasing interest felt in the study of the Law of Nations.

The respective authors are men long since of mark in the Republic of Letters, and their works now before us worthily sustain their several reputations. They are witnesses to the growth of thought in the subject-matter of their Treatises, alike in Philosophical Germany and Scotland and in Practical England. They have each of them characteristics which differentiate their works, and which alone would prevent us from being able to dispense with any one of them as Text-writers on International Law.

Mr. Hosack is always picturesque and vivid as a narrator of the events in and through which the conventional Law of Nations has been built up. He carries us along with him from the "earliest definition of contraband of war" in the days of Judas Maccabæus, through the Hellenic Amphictyony, in which he does not particularly believe, and the Roman Fecial College, down to Jean Petit and the Council of Constance, and to Jean Petit's successors in modern times, the Apostles of the atrocious creed of Assassination, who are content to work in secret, where their predecessor spake before Princes, Clergy, and Officers of State, and was neither ashamed, nor at the time, so much as rebuked. A nice story for the Middle Ages, Mr. Hosack seems to say. But he is fair-minded, and does not omit to record the fact that the doctrine of Jean Petit was condemned by the Council of Constance. The Fifteenth Century, which saw this execrable doctrine both upheld and condemned, is a period of deep interest to the student of History and Politics. Without it, the changes of the Sixteenth Century would have been either unreal or unintelligible,

and the Political changes of the Reformation period are, as Mr. Hosack justly points out, no less important than the Religious.

Space will not here admit of our doing more than outline thus briefly the general plan of Mr. Hosack's book, which will be read with pleasure and profit by all who take an intelligent interest in the history of Man as a Political being, and in the development of the Law governing the relations of men in the Commonwealth of Nations.

Dr. Von Bar, whose name is well known among students of International Law as one of the ablest living text-writers in Germany, the classic soil of Savigny and Bluntschli, comes before us in the present volume through the agency of a Scottish advocate, as did Von Savigny himself in his Treatise on the Conflict of Laws, edited by Mr. Guthrie, noticed at the time in this *Review*.

In his career as Assessor at the Tribunals of Stade and of Göttingen respectively, as well as his Professorial life at Rostock, Breslau, and Göttingen, Dr. Von Bar has been naturally led to devote his attention principally to the Penal branch of the Science of Law. As with the rest of his brethren in Germany, the Roman Law forms the basis of the Juridical scheme of the distinguished Göttingen Professor, not of course in the sense that he would fain build up his theory on the title of the Code, *De Summa Trinitate*, but in the very real sense in which that Law must underlie all our attempts at the construction of a scientific scheme of Jurisprudence.

In style, Von Bar inclines to the severe. Mr. Gillespie appears to have rendered his author with success as to clearness, though English readers may perchance accuse him here and there of Scotticism, not always readily apprehended by the Southron mind. In his preface, the editor has allowed a curious mistake to pass the press, in speaking of our able *confrère*, M. Clunet, of Paris, as "Chanet," as well as in printing "Privée" for "Privé" in the title of the Review edited by M. Clunet. In his next edition, we hope Mr. Gillespie will let us read of the familiar Cino da Pistoja, instead of the unfamiliar "Cinus of Pistorium," of Von Bar. The book which Mr. Gillespie has produced is one which should find a place at once among the shelves of the Criminal Lawyer, as well as the International Jurist. It deals with matters constantly occurring in Practice, no less than with the Theory upon which that Practice is or may be based.

Professor Lorimer's Philosophical View of the Law of Nations, so far as it is yet before us, deals from the point of view of his Chair and School, with the most complex and varied problems in morals and philosophy which can present themselves to the Jurist in his consideration of International Jurisprudence. Can there be such a thing, he asks, as the "perpetual exclusion" of a particular nation from a particular form of user of the sea, the highway of nations? And applying his principles to the case of Russia, and her assumed perpetual exclusion from the Black Sea, he admits a very considerable force in the arguments of Baron Brunnow. Precedents in International Law are, for Professor Lorimer, but as snakes in Iceland. They cannot be said to exist, and their consideration, therefore, is readily dismissed within four pages.

But if Precedents are thus summarily treated, Principles are earnestly advocated in the learned author's Cardinal Doctrines of Recognition, and the Normal and Abnormal Relations arising therefrom. To the consideration of these doctrines and their consequences, Professor Lorimer devotes the main portion of his present volume. We shall be glad if the entire work shall have reached our hands by the time that we can return, as we hope ere long to return, to the interesting group of Treatises on the Law of Nations, to whose value we have here endeavoured to draw attention, though unavoidably from the imperative necessities of time and space, in a mere outline, to be filled up hereafter. Meanwhile, we heartily commend the works of Mr. Hosack, Dr. Von Bar, and Professor Lorimer, to the thoughtful members of the Legal Profession and of our Universities, as containing the ripe fruit of ripe minds in the deduction of the History and Principles of the Law of Nations.

Griffith's Married Women's Property Acts. Fifth Edition. By S. WORTHINGTON BROMFIELD, of the Inner Temple, Barrister-at-Law. Stevens and Haynes. 1883.

The ever-widening importance of the law relating to married women and their property is well exemplified by the significant fact that the second edition of Mr. Griffith's work published in 1873, was a slim little volume of some thirty-seven pages, while the present edition contains over 240. This may not be a

source of unmixed gratification to the readers and students of the law, but Mr. Bromfield has done his work so well that their toil in perusing his pages will be fully repaid. The increase in the size of the book is not to be wondered at; for the new Act involves a greater alteration of the law than the first Married Women's Property Act, 1870; and in the thirteen years from the date of the passing of that Act many important cases have been decided, not only generally on the law of husband and wife, but on the different sections of that particular Act and its amending statute of 1874. Another reason conspires with the foregoing to render any treatise on the new Act almost necessarily of considerable length, viz., its doubtful drafting; and there are several sections not only obscure in their language, but actually suggestive of litigation. It seems a pity that one of the distinctive features of the previous editions, the Introductory Chapter, should now disappear, and be incorporated in the various notes to the sections. Perhaps its sacrifice was called for by reasons of space, but it will be missed for its clear and faithful history of the equitable and statutory growth of the separate use. Indeed the Editor deals less with the historical than with the practical every-day working of this momentous change in English domestic life. In legal parlance the new statute is designated as being merely a consolidating and amending Act; in politics it would be styled a revolution. We shall look with some anxiety to observe the temper in which the judges will approach it; and it is not difficult to foresee that they may make much of it, or reduce its effect within modest limits unsuspected and unintended by its sponsors. There is another class of persons who will have something to say to the Act—the conveyancers, and their ingenuity is matchless. The notes are full, but anything rather than tedious reading, and the law contained in them is good, and verified by reported cases. On one or two points we might break a lance with the author, but it must be confessed these points await judicial decision. A distinct feature of the work is its copious index, practically a summary of the marginal headings of the various paragraphs in the body of the text. This book is worthy of all success. The publishers are to be congratulated on having secured the services of Mr. Bromfield to take up the labour laid down by the late Mr. Griffith, and they deserve to be complimented on the pains bestowed upon the publication.

The Married Women's Property Act, 1882. By H. A. SMITH, M.A., LL.B. (Lond.), of the Middle Temple, Barrister-at-Law. Stevens and Sons. 1882.

Mr. Smith's work on the important topic of the Married Women's Property Act, 1882, plunges almost at once *in medias res;* for his introduction is meagre in the extreme; this, we fancy, has caused him to be too prolix in some of his notes, and inclined to wander into matters not exactly relevant to the point under discussion; and we find much of the old law which it was not necessary to set forth. This has led to the curtailment of notes on certain sections which would otherwise have been more full and complete. There is, however, a great deal of useful information on the general law of husband and wife not necessarily connected with the Act under review; and in this respect Mr. Smith's book will be found of use to those who desire to consult it on points of practice, to which his attention seems to have been specially devoted. We must differ from his opinion of the effect of *Fear* v. *Castle* (8 Q.B.D. 380), which is still law as affecting those married between July 30th, 1874, and January 1st, 1883, that case, decided on the proviso of section 5 of the Act of 1874 (37 and 38 Vict., c. 50), was clearly meant to relieve the husband who had *bonâ fide* satisfied to the amount of the assets coming to him *jure mariti*, the claims of his wife's antenuptial creditors against him; and does not support the narrow construction put upon it by the author, that in the event of two of a wife's creditors issuing their writs, one after the other, and the later creditor prosecuting his action to judgment before the earlier creditor, then the husband shall not be entitled to set off the judgment recovered against him in the second action as against the first creditor who is more dilatory in his process, because the words in the proviso "subsequent action" can only mean an action brought after the first. The words of the proviso are quite wide enough to protect the husband; and the legislature never supposed that, under the ordinary circumstances of life, a later action would be finished before an earlier one. Such a construction would be a premium upon laches and negligence. The appendix contains the statutes passed in recent years relative to the growth of the theory of the independence of the wife in respect of her property. The editing seems accurate; but references to all the contemporary reports would have rendered the work of greater usefulness and value.

We must praise without stint the style in which the book is printed and generally presented to the public.

The Married Women's Property Act, 1882. By C. A. VANSITTART CONYBEARE, M.A., of Gray's Inn, and W. R. ST. CLAIR ANDREW, M.A., of the Inner Temple, Barristers-at-Law. H. Sweet. 1882.

This treatise on the Married Women's Property Act, 1882, was not the first of its kind to make its appearance, but has not suffered from the delay, for in all respects it is an excellent little volume; and we can congratulate the authors on introducing to the Profession a work of honest labour on a subject of such vast importance as that of the rights of a married woman to her property. Messrs. Conybeare and Andrew have classified their work as follows:—(1.) An introductory chapter, in which they set forth the old law in a small but accurate compass, and mark the gradual growth of ideas which expanded into the Act of last year. (2.) The Act itself, with its sections fully noted and explained. The notes contain a considerable amount of matter which is very well put together. The necessity for such annotation is seen when the few words of section 1, sub-section 3, require four closely-printed pages to elucidate their meaning. It must be borne in mind, too, that the drafting of the Act leaves much to future judicial construction, indeed we shall be much surprised if some of the decisions on this Act do not startle its authors with their unlooked-for results. Under the corresponding sections of the later statute are given, in the form of notes, the more important sections of the Acts of 1870 and 1874, which, though repealed, yet affect a considerable number of persons, because of the saving of rights and liabilities accrued under them at the date of the operation of the last Act. These sections are distinguished by a black line drawn parallel to them on their outer margin. (3.) Lastly comes an Appendix, including the statutes dealing with the subject, the Divorce and Matrimonial Causes Acts, 1857 and 1858, The Married Women's Property Acts, 1870 and 1874, and The Settled Land Act, 1882. There is room, we think, for disagreement with some of the conclusions on doubtful points; but there is also ample proof of reading, sound law, and ingenuity in propounding theories. We are sure this book will be found quite one of the best in assisting the practitioner to a right view when called upon to direct his attention to this Act, which bears within itself the germs of a fruitful crop of litigation.

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I.—LEIBNITZ'S MEMOIR UPON EGYPT.

(*Consilium Ægyptiacum.*)

THE recent publication of the political writings ot Leibnitz by the Comte Foucher de Careil,* followed by the edition of the original text of the Great Memoir upon Egypt,† which Leibnitz drew up in the hope of being allowed to submit it personally to King Louis XIV. of France, has happened at an opportune moment, when the attention of European Diplomatists is directed towards Egypt under circumstances very different from those, which attended the conclusion of the Treaty of Aix-la-Chapelle in 1668. Before that time, indeed, the religious enthusiasm of Europe, which had given rise to the Crusades, had expended itself in more than one vain attempt to make Egypt a base of military operations for the recovery of the Holy Land. St. Louis (IX.) of France was the last Royal Leader of a Crusade who made such an attempt. He succeeded in capturing Damietta, but he was subsequently taken prisoner at Mansura, and had to ransom himself and his knights from the Founder of the Mameluke Dynasty. The fire, however, which had been kindled by the preaching

* Œuvres de Leibniz d'après les Manuscrits Originaux, par A. Foucher de Careil. Paris: Didot, 1862-69.

† Leibnitii de Expeditione Ægyptiacâ Scripta Omnia. Edidit Onno Klopp. Hanoveræ. Typis Klindworthianis. 1864.

of Peter the Hermit, and which had burnt fiercely during two centuries, was not entirely extinguished upon the death of St. Louis. This event took place near the ruins of Ancient Carthage in 1265, whilst he was engaged in a second expedition to the Holy Land in the hope of baptizing the Bey of Tunis on his way, and of ultimately recovering for the Christian world a safe access to the cradle of their Faith.

Marino Sanuto, surnamed Torcelli, a patrician of Venice, is the torchbearer, who has endeavoured to keep alive the sacred flame and to hand it down to after-ages in his work entitled "*Secreta Fidelium Crucis.*"* Sanuto had failed to induce Pope John XXI. to proclaim a new Crusade, nor could he succeed in inducing King Edward II. of England or any of his contemporaries amongst the European monarchs to assume the Cross. He has, however, left behind him a work which has served to perpetuate the idea that Egypt was the true base of operations, which should be occupied in the first instance, if the Powers of Europe were disposed to make any further attempt to expel the Moslem from the Holy Land of the Christians. Sanuto's work was dedicated to the Doge and Senate of Venice in 1324, eight years after the death of the Pope, whose sanction he had endeavoured in vain to obtain in favour of a Tenth Crusade. His manuscript was for the first time committed to print by Jacobus Bungarsius in 1611, and it forms the second volume of the "*Gesta Dei per Francos,*" which Bungarsius dedicated to Louis XIII. of France. The MS. of Sanuto's work, which came into the hands of Bungarsius, had previously had a very narrow escape

* A MS. entitled "Secreta Fidelium Crucis" appears as No. 1036 amongst the MSS. of the ancient Library of the Louvre in Paris, which was collected between A.D. 1373 and A.D. 1424. It is mentioned in M. Delisle's Cabinet des Manuscrits de la Bibliothèque Impériale, vol. iii., p. 162. From the circumstance that it contains a "mappemonde" of Egypt, which Bungarsius has reproduced in print, it is most probably identical with Sanuto's work.

from destruction, when the famous Benedictine Abbey of Fleuris was destroyed in 1562 by the French Protestants. We are indebted to the learned Benedictine Father Mabillon for the anecdote that Peter Daniel, by using the interest of Cardinal Chatillon, was enabled to purchase from the soldiery, who had plundered the library of the Abbey, a considerable number of MSS., and that after his death the MSS. passed by sale into the hands of Bungarsius and the Jesuit Peter Petavius, two of the most learned men of the sixteenth century. It was Sanuto's work, of which the MS. was thus happily rescued from destruction, that came under the notice of Leibnitz in his early youth, and which set him thinking how best he could fan once more into a flame the dying embers of the old Crusading Spirit. Leibnitz was born at Leipzig in 1646. His father's family was of Slavonic origin, but his mother came of a German stock. He had not yet attained his majority, when the Grand Vizier Kupriuli struck terror into Europe by his threatened march upon Vienna, and when Louis XIV. having wisely sent succours to the Emperor Leopold the united forces of France and of the Empire, under Montecuculi, achieved near the monastery of St. Gothard, in Hungary, a signal victory over the Turkish arms in 1663. Europe was at that time convulsed with fear lest the Turks should overrun the entire Continent, and Hermannus Conringius* became the spokesman of terrified Christendom, and exhorted the King of France to assail the Turk in Africa, where he was more vulnerable than in Europe. Louis XIV., however, had come over to the opinion in the course of a few years that an alliance with the Turk would be more for the advantage of France than an alliance with the Emperor against the Turk, and so Conringius found himself endeavouring to charm a deaf adder, when he counselled

* De bello contra Turcas prudenter gerendo libri varii, editi cura H. Conringii. 1664.

Louis XIV. to resume the Crusader's lance and to effect a landing in Egypt as the best approach to Palestine. Meanwhile, the relations between France and the Ottoman Porte had become intensely strained. The Grand Vizier Kupriuli-Ahmed Pacha had on several occasions treated the Ambassadors of France with scant courtesy, and had on more than one occasion inflicted upon them gross indignities, so that the balance between war and peace was, in 1671, hanging upon a very slender thread. The youthful Leibnitz had in the interval made the acquaintance at Nuremberg of the Baron J. Christian von Boineburg, one of the most distinguished statesmen of the period, who had formerly been the chief minister of the Elector of Mayence, the Arch-Chancellor of the Roman Empire of the Germans, and who induced him to go to Mayence and to enter the service of the Elector. One of the earliest of his political writings under the auspices of the Elector was a treatise generally known by the title of *Securitas Publica*, in which he suggested that the States of Europe, instead of turning their arms against one another, should employ their combined forces in the conquest of the non-Christian world, and that France, which had sent forth in former days so many Champions of the Cross, should take the lead and have for her share Egypt, the most fertile land of the whole world, and the most easy to occupy. In the course of the next following year, Leibnitz had matured his plan so far, that he drew up two preliminary memorials to be presented to Louis XIV. These memorials were transmitted by the Baron von Boineburg to the Marquis de Pomponne, the French Minister of State for Foreign Affairs, with a request that he would procure for their author an audience of the King, that he might disclose to his Majesty personally the details of his scheme. The utmost secrecy was meanwhile to be maintained as indispensable for its success. Louis XIV. was at this time meditating an invasion of the

United Provinces, and Leibnitz had dexterously engrafted on the ideas of Sanuto a suggestion, that Louis XIV. would accomplish the subjugation of the Dutch nation more easily by destroying their trade with the far East, and by assailing their colonies through Egypt, than by overrunning the provinces themselves and compelling the Hollanders to retreat behind the shelter of their dykes. A change, however, as already mentioned, had taken place in the ambitious designs of Louis XIV., and the chief of the House of Bourbon was prepared to form an alliance with the Turk against the House of Hapsburg, on the condition of taking Germany for himself, and leaving Hungary and Poland to the share of the Turk. The youthful Leibnitz, notwithstanding that the decided inclination of the French King towards the Turkish alliance was widely known, was sanguine enough to believe that he could divert the King from his design by suggesting to him a more glorious enterprise in the common interest of Christendom, which would also secure to the House of Bourbon a preponderance of power over the House of Hapsburg. That Leibnitz's two preliminary memorials were submitted to Louis XIV., is known from a letter addressed by the Marquis de Pomponne to the Baron von Boineburg, of the date of 16th February, 1672, which is preserved in the Electoral Library in Hanover, whilst the two memorials themselves, together with an introductory letter from the Baron von Boineburg, are preserved in the Archives of the Ministry of Foreign Affairs in Paris. Leibnitz himself arrived in Paris in the month of March, 1672, but he could not succeed in procuring a personal interview with the King. In fact neither Louis XIV. nor his minister relished the idea of a "Holy War," and in the course of the summer the French Minister at Mayence received a letter from the Marquis de Pomponne, which concluded with the following passage:—"I say nothing to you about the projects of a Holy War, but

you know they have ceased to be in fashion since the time of St. Louis."* Leibnitz, however, did not renounce all hope of a favourable issue to his mission, until a year had elapsed, by which time France had once more succeeded in concluding a treaty of friendship with the Ottoman Porte (3rd June, 1673).

There is no positive evidence that any other than the two preliminary memorials above mentioned were submitted to King Louis XIV., or were placed in the hands of his Minister of Foreign Affairs; but there is preserved in the Electoral Library of Hanover, of which Leibnitz was appointed keeper in 1679, a bulky Latin memoir, on which are endorsed, in Leibnitz's handwriting, the words, "*De Expeditione Ægyptiaca Regi Franciæ proponenda justa dissertatio.*" There is also in the same archives a shorter Latin manuscript, which is endorsed in a similar handwriting, "*Consilium Ægyptiacum Boineburgio amico destinatum.*" There is good reason to believe that the larger and more complete dissertation was prepared by Leibnitz during his sojourn in Paris, in the year 1672, with the view of submitting it to the King, if he should favour him with an audience, and that the shorter manuscript, which may be regarded as a summary of the larger memoir, was destined for the Baron von Boineburg, but the Baron's premature death, in December, 1672, prevented its being delivered into his hands. The death of John Philip, the Elector of Mayence, followed soon upon that of his trusted Minister, and Leibnitz's thoughts were subsequently directed to other subjects, which proved to be of more benefit to the world at large, and which brought undying honour upon himself; we allude to his invention of the Differential Calculus, which has given rise to as much controversy amongst men of science as

* Je ne vous dis rien sur les projets d'une guerre sainte, mais vous sçavez, qu'ils ont cessé d'être à la mode depuis St. Louis. Letter of 21st June, 1672, from the camp before Doesburg. Foucher de Careil, Vol. 5, p. xiii.

Leibnitz's Memoir upon Egypt has caused amongst men of letters.

Man scatters the grain over the field, sometimes despairing that the seed will take root, by reason of the adverse circumstances of the season at which it is sown; at other times in full confidence that the seed will strike deep into the ground, and that other hands, if not his own, will, in due time, gather in the harvest. So it was with Leibnitz. He had no doubts that his invention of the Differential Calculus would produce a rich harvest of scientific results, although in all probability he did not anticipate that it would in time supersede Sir Isaac Newton's method of Fluxions. On the other hand, he could scarcely have anticipated that a school of historians would spring up two centuries after his project of an expedition to Egypt had been rejected by Louis XIV., and would contend that it had been studied and approved by one of the greatest captains of his age, and that General Bonaparte, in his expedition to Egypt in 1797, did little more than carry into execution the design which Leibnitz had in vain recommended to the most ambitious of the Bourbon Kings. M. Thiers, in his History of the French Revolution,* without precisely asserting the fact, countenances the notion that the young General Bonaparte's head was full of the vast projects of Leibnitz, which had been neglected by Louis XIV., whilst M. Michaud, in his Histoire des Croisades,† contends that General Bonaparte, before he set out for Egypt, must have known the plan of the campaign submitted by Leibnitz to Louis XIV., and he gives credit to a story which has had some circulation that Carnot, a member of the French Directorate, discovered Leibnitz's memoir in the Archives at Versailles, whence it disappeared unaccountably during

* Livre X., ch. I.; Histoire de la Révolution Française.

† Tom. V., p. 392; Sixième Edition.

the early troubles of the Revolution. Sir A. Alison, in his History of the French Revolution; and Herr von Pfister, in his History of the Germans, have adopted similar views as to the plagiarism of General Bonaparte, the origin of which notion Comte Foucher de Careil, in his Introduction to the fifth volume of his recent edition of the works of Leibnitz, attributes with some show of reason to an English pamphlet published anonymously in 1803. It may be conceded, as we shall proceed to show, that General Bonaparte's expedition led to the disinterment of Leibnitz's writings upon Egypt from the secret repositories of the ancient Electoral Library in Hanover, to which the author had consigned them, possibly in the hope that posterity might welcome their publication at some distant day as curiosities of literature long after they had ceased to possess political interest. But, strange to say, both the greater Memoir and the Summary came to the front more than a century after Leibnitz himself had recognised the failure of his views to excite the political interest which he had anticipated, and both France and England vied with each other in giving to the writings of the youthful Leibnitz a political importance which might, perhaps, with justice have been attached to them, if they had been the production of the great jurist and philosopher in the maturity of his high intellectual powers, but which was quite out of place under the circumstances under which we now know them to have been composed. Shortly after the rupture between France and England in 1803, when England resolved to withdraw her Ambassador from Paris under circumstances, which the British Government held to be conclusive, that the First Consul Bonaparte, in negotiating the Peace of Amiens, had simply in view to secure a suspension of hostilities on the part of England, whilst he turned his arms against Austria, an anonymous pamphlet in the English language was

published in London, entitled, "A Summary Account of Leibnitz's Memoir, addressed to Louis XIV., recommending to that Monarch the conquest of Egypt as conducive to the establishing a supreme authority over Europe." This pamphlet contains numerous extracts from the Latin text of the greater Memoir of Leibnitz, without any explanation of the circumstances under which the author had obtained access to the text of the memoir. The pamphlet was printed for Hatchard, London, but the present house of Hatchard and Co., of Piccadilly, has preserved no record of its authorship. Dr. Guhrauer in his "Kur-Mainz in der Epoche von 1672," published at Hamburg in 1839, cites a German translation of the pamphlet, which was published by Archenholz in his journal, the "Minerva," in 1804, with the observation, that the MS., from the circumstances under which it was written, and from the great name of its author, merited the attention of all thoughtful men. We have endeavoured in vain to discover any certain clue to the authorship of the pamphlet; which is the work to which Comte Foucher de Careil has attributed the origin of the notion, that General Bonaparte was indebted to Leibnitz for the idea to which he gave effect in his expedition to Egypt in 1797. The pamphlet, no doubt, contains a curious passage in its introduction, in which it is stated that "the expedition of 1798 was only the eventual accomplishment and exact execution of the very plan, which had been laid up at Versailles for above a century amongst the secrets of State." This passage raises a presumption that the writer was acquainted with the story about the Director Carnot having discovered Leibnitz's Memoir in the Archives at Versailles. But if it be assumed that Carnot did discover some writings of Leibnitz in the Archives at Versailles, and that those writings unaccountably disappeared in the early troubles of the Revolution, it may well have happened that

those writings were at that time removed to the Archives of the Department of Foreign Affairs in Paris, and are identical with the writings of Leibnitz now preserved in those Archives to which allusion has been already made.*

Much new light has been thrown upon this subject by the recent publication by M. Onno Klopp, late keeper of the Electoral Library in Hanover, of all the writings of Leibnitz connected with his project of an expedition to Egypt. It is possible that the fact of the existence of an important MS. on the subject of Egypt from the pen of Leibnitz was known in Paris as early as 1796, inasmuch as Eberhard in a work entitled "Pantheon der Deutschen," published in 1795, made known the fact that a memoir by Leibnitz on the subject of an expedition to Egypt was preserved in the Archives of the Electoral Library in Hanover, but no note exists in that Library of any transcript of that MS. having been made before 1798. Count Kielmansegge, the Regent of Hanover, directed copies to be made in that year of both the longer and the shorter of the two memoirs already mentioned, the longer of which was transmitted to England in 1799, and the shorter was kept in the Library. This shorter MS., known generally as the *Consilium Ægyptiacum*, was destined to pass into the hands of the First Consul Bonaparte, some time after his return from Egypt.

What became of the larger MS., beyond the fact that it was transmitted to England, we have been unable to discover, but it may be presumed, without much risk of missing the mark, that the body of the pamphlet of 1803 was composed by one who had access to the text of Leibnitz's

* We learn from the memoirs of the Duc de St. Simon, that it was not the practice in France in 1672 to deposit ministerial papers in the Archives of the Foreign Depaitmen in Paris. In fact, the Archives of the Foreign Department were first established in the Pavillon des Petits Pères, in the Place des Victoires, by the Minister Torcy, the successor of Croissy, who had succeeded to the Marquis de Pomponne in 1679. Louvois was the first French Minister who left behind him his ministerial papers for the use of the State.

larger Memoir. Unfortunately, the pamphlet is anonymous, and we have failed to find any allusion to its author in the political writings of the day. That the pamphlet was composed under the auspices of Lord Grenville is highly probable. It advocates his personal views in regard to the Peace of Amiens, and Lord Grenville had been Secretary of State for Foreign Affairs at the time when the Regent of Hanover directed a copy of the larger Memoir to be transmitted to England. We are disposed to regard the pamphlet of 1803 as the joint production of two writers. It consists of (1) a prologue or introduction, (2) the body of the pamphlet, which contains extracts from the Latin text of the larger Memoir of Leibnitz, and (3) an epilogue, as it were, which criticises the three most objectionable articles of the Peace of Amiens. The prologue and the epilogue are *primâ facie* the work of a politician, whilst the body of the pamphlet betrays the hand of a scholar. No contemporary record of the pamphlet, as we believe, exists in the British Foreign Office, but two copies of it are preserved in the British Museum. One of these copies was the property of Sir Joseph Banks, and bears his name stamped on the back of the title page. The other has inscribed on the face of its first page in two separate lines, the words—"From the Editor, Grenville Penn Esq." This inscription has led some writers to state that Mr. Grenville Penn was the author of the pamphlet. This fact, however, is extremely improbable. We take the inscription to mean nothing more than that the publisher, by direction of the editor, transmitted a copy of the pamphlet to Mr. Grenville Penn, and instead of writing "Grenville Penn Esq., from the Editor," inverted the order of the words. The handwriting furnishes no clue, for we have taken occasion to compare the handwriting on the pamphlet with a letter written by Mr. Grenville Penn, and experts in the British Museum have declared the two handwritings not to be identical. It

is not very likely that Mr. Grenville Penn, who was a scholar, if he had really been the editor and the donor of the pamphlet, would have added to his names the title of "Esquire;" besides, his studies lay in a direction other than that of politics. He was, however, a friend and neighbour of Lord Grenville's, and has dedicated to Lord Grenville one of his later treatises on poetry.* Two copies also of the pamphlet have found a place in a valuable collection of pamphlets in the Library of the Inner Temple, which formerly belonged to Mr. John Adolphus, the historian, but Mr. Adolphus has made no allusion to the pamphlet in his History of England. A fifth copy is preserved in the Library of the Faculty of Advocates at Edinburgh, and no doubt other copies are to be found in private libraries, of which no catalogue has been made public.

We tread on surer ground in tracing the fortunes of the copy of the shorter MS., known at Hanover as the *Consilium Ægyptiacum.*† Immediately upon the rupture of the Peace of Amiens, the First Consul despatched General Mortier with orders to occupy the Electorate of Hanover. Mortier's army corps was, in fact, but the advanced guard of the future Grand Army destined before long to overrun Germany, and

* It is quite possible that Lord Grenville, who was an excellent scholar, may have been the author of the pamphlet. It may be gathered from the public journals of the day, that the pamphlet was published on 8th June, 1803, twenty-six days after Mr. Pitt's return to office, and when it was known that the French had occupied Hanover. In the public advertisements of the pamphlet it is said "This pamphlet will form an interesting appendix to the State Papers relating to the negotiations with France."

† The phrase "Consilium Ægyptiacum" is used by Foucher de Careil to designate the longer memoir, inasmuch as the copy of the shorter memoir, preserved in the Library of the Institute in Paris, is simply entitled "Summa." See a paper by M. Mignet, the Secretary of the French Academy, in the Mémoires de l'Académie Royale des Sciences Morales et Politiques de l'Institut de France, Tom. II., 2me série (Paris, 1839), p. lxxviii.—lxxxiii. Also a paper by Guhrauer in the same Mémoires, Tom. I.—"Savants Etrangers." Paris, 1841.

to make famous "the Sun of Austerlitz." Mortier's appointment, however, gave great umbrage to the other General officers of the Republic, who saw in it nothing but an act of undue favouritism on the part of the First Consul towards an officer who had happened to be commandant at Fréjus at the time of General Bonáparte's return from Egypt, and who welcomed him warmly at a moment when the character of his coming reception in France was a matter of some anxiety to him. General Mortier was accompanied to Hanover by an ancient diplomatic agent of the French Government named Mangourit, who has drawn up an account of the MSS. of Leibnitz, which he saw in the Electoral Library at Hanover in company with the General. "The vast plan," we give an English translation of Mangourit's text, "of the conquest of Egypt, composed by Leibnitz, in the Latin tongue, is immense. No one of the works of the philosopher of Hanover attests more the breadth of his ideas, the depth of his views, the immensity of his erudition, and his consummate tact in the choice and application of its wealth in notes and reminiscences. Curiosity is awakened in all these respects, and the eye examines this voluminous production with the design of transcribing it. I was tempted to do so, but when I learnt that Marshal Mortier had ordered a copy for transmission to France, I felt less joy at being relieved from so laborious a task than at learning that the chief of the French army had this noble idea before him. The first thanks which the friends of science can address to him from the heart, and without manifestation, are probably mine. The plan of Leibnitz will without doubt be communicated to the Egyptian Commission of the Institute." *

Such is Mangourit's somewhat hyperbolic account of what he saw at Hanover, upon the faith of which M. Thiers

* Voyage en Hanovre fait dans les années 1803 et 1804, par M. A. B. Mangourit. Paris, 1805, p. 193.

pronounced his high eulogium upon Leibnitz's memoir.* So far, however, was General Mortier from having received any instructions from the First Consul to secure a copy of Leibnitz's memoir, if not the MS. itself, as might have reasonably been expected, if General Bonaparte had been induced by the writings of Leibnitz to undertake his expedition to Egypt, that it seems probable that General Mortier would have omitted to make any inquiry respecting it, if Professor de Villers, of Göttingen, who had been formerly a Captain of Artillery in the service of France, had not called the attention of the French officers to the literary treasures of the Electoral Library, and pointed out to them that Leibnitz's papers on the Conquest of Egypt were amongst them. The result was that M. Féder, the Librarian, delivered to General Mortier, in pursuance of his commands, the copy of the shorter Memoir of Leibnitz, which had been prepared in 1799 by order of the Hanoverian Government, and General Mortier forthwith forwarded it to Paris, with a despatch addressed to the First Consul, the words of which are of interest :—

"Mon Général,—Le célèbre Leibniz avoit proposé à Louis XIV. la conquête d'Egypte. Son mémoire manuscrit sur cette partie intéressante du Globe, écrit en Latin, est déposé à la Bibliothèque d'Hanovre ; j'ai cru qu'il ne vous serait pas indifférent de le lire.

"Veuillez recevoir, Mon Général, l'assurance de mon respectueux dévouement.

"ED. MORTIER."

It may be conceded that the ignorance of General Mortier on the subject of Leibnitz's proposal to Louis XIV., might be perfectly consistent with General Bonaparte's

* M. Thiers has stated that all that he personally knew respecting Leibnitz's memoir was derived from Mangourit's account of it. He styles the memoir as "un des plus beaux monuments de raison et d'éloquence politiques."

thorough knowledge of it, but there has been published among the correspondence of the Emperor Napoleon I. a letter addressed by him as First Consul to Cambacérès, the Second Consul, immediately upon his receipt of General Mortier's letter, which is calculated to remove all doubt as to the subject of General Mortier's communication being a novelty to the First Consul. The letter is dated from Namur, on 16th Thermidor, an XI. (4th August, 1803). It has a postscript to this effect: "Mortier sends to me at this very moment a manuscript in Latin by Leibnitz, addressed to Louis XIV., to propose to him the Conquest of Egypt. The work is very curious."*

The language of the First Consul's communication to his colleague on this occasion is hardly reconcileable with the theory that Leibnitz's memoir was the guiding star of the French Expedition to Egypt in 1797. There was a saying at Rome that when Augur met Augur, in the street, they could with difficulty refrain from smiling at one another. In like manner it would have been difficult for the First Consul, if he had already in his possession Leibnitz's greater memoir, to have refrained from remarking to his brother Consul that Mortier was not aware that he "was sending coals to Newcastle." It appears further that the First Consul did not attach much value to General Mortier's present beyond the fact that it enabled him, when Fourier, the Secretary of the Egyptian Commission of the Institute, drew up "La Description de l'Egypte" in 1807, to cause a paragraph to be inserted in the Historical Introduction

* Mortier m'envoie à l'instant même un manuscrit en Latin de Leibniz adressé à Louis XIV., pour lui proposer la conquête de l'Egypte. Cet ouvrage est très curieux. Correspondance de Napoléon I. No. 6976. There is a further letter of the same date, No. 6981, being the reply of the First Consul to General Mortier, of the following tenor:—"Citoyen Lieutenant-General Mortier, Commandant de l'Armée Française en Hanovre.—Votre aide de camp m'a remis avec votre lettre le manuscrit de Leibniz, que je reçois avec un grand intérêt et que je ferai traduire."

citing the celebrated Leibnitz as having, in the interests of the Christian religion, counselled Louis XIV. to make the Conquest of Egypt. "Religion," so runs the text of the introduction, "had formerly inspired our kings to acquire possession of Egypt. Several Princely Crusaders, and Pope Innocent III., whose political talent governed Europe, have endeavoured to accomplish this enterprise. A statesman, who possessed an eminent knowledge of the interests of the Christian States, Cardinal Ximenes, renewed the attempt. Ferdinand the Catholic, Emmanuel, and Henry VII., who have reigned with so much wisdom and renown, were allied in the same design. The celebrated Liebnitz, born for all great views, occupied himself for a long time with this object, and he addressed to Louis XIV. an extensive work, which has remained unpublished, in which he expounded the advantages attaching to such a conquest." Notwithstanding General Bonaparte's eulogy of the religious motives of Leibnitz, we venture to think that the counsels of Leibnitz would have weighed but a feather in the scale, if they had been invoked to turn the balance of General Bonaparte's judgment in favour of an expedition to Egypt, provided General Joubert had died before the 19th May, 1797, on which day the French expedition left the shores of France. It was a singular coincidence that the news of Joubert's death at the battle of Novi reached Ajaccio a few days only before General Bonaparte landed there on his return from Egypt. He then became aware for the first time that the only General officer, whom he deemed to possess both the capacity and the resolution to fill the foremost political place in France, and on whose sword the Abbé Sieyès had relied,* had ceased to be any longer a barrier in the way of his own advancement to that place.

The correspondence of the Emperor Napoleon I. has been published subsequently to the passage in M. Thiers'

* M. de Barante's Histoire du Directorat. Tom. III., p. 493.

History of the French Revolution, which has led so many other writers of history astray. That correspondence leaves no reasonable doubt, that General Bonaparte was not acquainted with either of Leibnitz's memoirs respecting Egypt before he received a copy of the shorter memoir from General Mortier. His early predilection had been in favour of the policy, which the Bourbons had initiated, of an alliance with the Porte against Austria and Russia, and the correspondence of Napoleon I. has disclosed to us a letter which General Bonaparte addressed on 30th August, 1795, to the Comité de Salut Public, in Paris, offering to pass into Turkey with a mission from the French Government for the purpose of placing himself at the head of the Sultan's artillery. "If I can," are his words, "in this new career render the Turkish arms more formidable, and improve the defence of the fortresses of that empire, I think that I shall have rendered a signal service to my country, and have deserved her gratitude on my return."* De Bourrienne, in his Life of Napoleon, has given a rough draft of the same note, but seems not to have been aware to whom it was destined to be addressed. He states, however, that at that early period of the future Emperor's career, for he was then only in his twenty-fifth year, he had a fixed idea that the East had always been the cradle of military glory as well as the birthplace of all religions and all metaphysics. On the other hand, the Directorate possessed in the State Archives of France ample materials of another kind for forming a judgment as to the expediency of permitting General Bonaparte to carry out his favourite idea. Not to mention the Memoir presented to Louis XV.,

* "S'il peut, dans cette nouvelle carrière, rendre les armées Turques plus redoutables, et perfectionner la défense des places fortes de cet Empire, il croira avoir rendu un service signalé á la patrie, et avoir, à son retour, bien mérité d'elle."—Recueil des Traités de la Porte Ottomane par le Baron J. de Testa. Tome II., p. 208. Correspondance de Napoléon I. Tome I., p. 48.

in 1769, by the Comte de Vergennes* on his return from his embassy to Constantinople, the Directorate had at its command a still more valuable memoir drawn up by M. St. Priest,† the French Ambassador to the Porte, in 1774, after the peace of Kutchuk-Kainardji, in which he had pointed out, in anticipation of the Turkish Empire crumbling to pieces, that Egypt was the country the most easy to conquer and to keep. But by far the most valuable memoir and the most interesting in the present day is the Report presented to the French Directorate on 13th February, 1798, founded on the notes of M. Magallon, the Consul-General of France, who had resided in Egypt during thirty years, and which were communicated to General Bonaparte by order of the Directorate. A spirit totally different from that of Leibnitz breathes throughout this Report. It is no longer the expulsion of the Mussulman from the land of the Pharaohs and the occupation of an advanced post towards the recovery of the Holy Land of the Christians which is to be the reward of success. The emancipation of the Arab *fellâheen* from the tyrannical yoke of the Mameluke Beys is the polar star of the enterprise. It is no longer Christendom that is to be marshalled against Islam, but the civilisation of the West is to raise a new banner, and France is to take the lead in an expedition, which purported to have in view the redemption of the Arab from his bondage to the Turk, and the substitution of a beneficent and intelligent government in the place of a military oligarchy. "It is painful," says the Report, "to think that such bountiful gifts of climate and of soil are useless, and that the inhabitants of a country, to which nature has been so beneficent, are the most miserable people in the world. But if they could pass under an enlightened government, a most happy

* Baron J. de Testa. Traités Ottomans. Vol. II., p. 181.

† Andréossi, Constantinople et le Bosphore de Thrace. Paris, 1828.

change would soon be effected."* Consul-General Magallon, however, did not venture to anticipate such a change in the government of Egypt as the last eighty years have witnessed, when not only the military oligarchy has been swept away, but instead of a Pacha holding a precarious office, of which the tenure was limited to three years at the utmost, a Prince rules over Egypt, whose throne is established on the combined principles of autonomous government, hereditary succession and commercial independence.

Nearly a century has elapsed since Consul-General Magallon described "the lot of the cultivator of the soil of Egypt as the most miserable on earth. For the fruit of all his labour during an entire year," he says, "he has nothing but maize-bread, a blue shirt, and a clay hut without any furniture. His slightest fault is punished with the bastinado. This people abhors its tyrants, but it has not energy to shake off their yoke. It will bless the French, who will deliver them from it."

Unfortunately, Leibnitz, whose memoir treats very fully of the military institutions and of the commercial riches of Egypt, is silent as to the condition of the cultivator of the soil. No traveller in Egypt had hitherto concerned himself with the lot of the *Fellâh*, and perhaps no foreigner would have been able in those days to make himself acquainted with it, so that we have no data to enable us to measure the *vis inertiæ* of the *fellâh*, or his possible progress during the century which preceded M. Magallon's Report. The important question of the present day is whether the condition of the *fellâh* has improved since the power of the Mameluke Beys was crippled by General Bonaparte at the Battle of the Pyramids, in 1798, and their order was annihilated by the craft and treachery of Mehemet Ali Pacha in 1811. The *fellâh* of the present day has little advantage over the *fellâh* of a century ago as respects his dwelling, or

* Baron J. De Testa. Traités. Vol. I., p. 525.

his food, or his clothing. A mud hut still suffices for his dwelling, under a sky from which the rain of heaven rarely or never descends; the staple of his food is still maize in the Delta, and sorghum flour in Upper Egypt, whilst an indigo-dyed cotton shirt (*kamîs*) is his chief raiment, supplemented sometimes with a cloak of brown goat's wool, or a blanket of sheep's wool. If, however, there may be discovered some improvement in these few necessaries of the *fellâh's* life, they have been purchased by an indebtedness of the *fellâheen*,* amounting to nearly ten millions of pounds sterling, for such is the calculation which the Earl of Dufferin has submitted to Earl Granville in his despatch from Cairo, of the date of 1st January, 1883. This is not a satisfactory result of the emancipation of the peasantry from the despotism of the Beys, even if it be owing to circumstances of an abnormal character, which have forced the peasantry not merely to mortgage their lands, but to borrow money on their own personal security. Leibnitz, in his greater Memoir, states that the tribute payable by the Pacha of Egypt to the Ottoman Sultan amounted in his time to nearly 8,000 purses. Considerable allowance must be made for the greater value of gold in the seventeenth century, as compared with the nineteenth, but it deserves to be noted that in the firman of 1st June, 1841, granting to Mehemet Ali Pacha autonomy and hereditary succession, the tribute to the Porte was fixed at 80,000 purses, whilst in the firman of 27th March, 1866, which granted to his grandson, Ismail Pacha the same privileges with the addition of commercial independence, and the title of Khedive of Egypt, the tribute has been increased to 150,000 purses, at which amount it has been maintained down to the present time.† It would be foreign to the object of the present paper to examine

* *Fellâhin* or *Fellâheen* is the plural of *Fellâh*.

† Firmans granted by the Sultans to the Viceroys of Egypt, 1841—73. Parliamentary Paper, Egypt, No. 4 (1879).

how this terrible indebtedness of the Egyptian peasantry has been brought about, but one most obvious step for its relief is suggested by a comparison of the amount of tribute payable to the Porte whilst the Mameluke Beys were virtually supreme in the different provinces of Egypt, and the amount of tribute which the Porte has exacted since their destruction.

The Ottoman Empire was admitted solemnly into the European Concert of Public Law by the Treaty of Paris of 1856. In virtue of that compact, the Christian Powers of Europe have tacitly undertaken certain duties towards the Ottoman Empire, and in return the Porte has tacitly contracted certain obligations of public faith towards the Christian Powers. The day of the Crusades has long since passed away, never to return, although France and Russia both claim a *locus standi* in Jerusalem as guardians of the Holy Places. The problem, which now awaits solution, and in which all the Christian Nations of Europe have an equal interest, is how to graft the political institutions of Western Europe upon the social institutions of the Mahommedan world. Despotism, however disguised, is fast becoming a political anachronism, even in the far East. When Arabi Bey and his Colonels proposed to dethrone the Khedive, they were attempting to recall the epoch of the Mamelukes and to revive a practice instituted by the Emperor Selim I., which may have been useful in maintaining the supremacy of the Porte, but has been fraught with disastrous consequences to the population of Egypt. Since the destruction of the Mamelukes in 1811, the population of Egypt has increased by upwards of two millions, but even now it is far lower than it was in the time of Herodotus, or five centuries later in the time of the Emperor Nero. The despotism of the Beys was fatal to the growth of an indigenous trading class, and the foreigner under the protection of his Consul has filled the gap in the

social system, to which the Egyptian *fellâh* could not then venture to aspire. Now, however, the peasant has a chance of exchanging his mud hut for the trader's shop, or of taking his place by the side of the Coptic artizan, and persons of *fellâh* origin have even been promoted by the three last Pachas to posts of honour and of authority.

These are streaks of light which announce the dawn of a better order of things. The excessive indebtedness of the *fellâheen* will no doubt be a great stumbling block in the way of improving their condition as a class, and may in fact give rise to a new organisation of agricultural labour in Egypt. A question proposed some fifty years ago as the subject of a prize essay in the University of Oxford was, "Why do the institutions and customs of the Eastern Races change more slowly than those of the Western Races?" but no essay was sent in that was thought worthy of the Chancellor's prize. It requires no soothsayer to foretell that the rapidly increasing intercourse between the Eastern and the Western Races will tend to quicken the step of the former, and by degrees to create a desire on their part to overtake and keep abreast of the latter. There is one way, however, in which the Western Races may hope to maintain for themselves permanently their *prestige* amongst the Eastern Races, namely, by an incorrupt administration of justice. The maxim of *nulli vendemus, nulli negabimus justitiam* is novel to the Asiatic, and the population of Egypt is essentially Asiatic. The Christian Powers of Europe have on this account a common interest in promoting the successful working of the new international tribunals of Egypt in order that they may become a model for new indigenous tribunals. This will best be accomplished by simplifying the procedure, and modifying the codes now administered by the international tribunals, so as to render them more suitable to the require-

ments of the Egyptian people.* It may not be inopportune to remind the Christian Powers, that, in seeking to introduce an European element into the indigenous tribunals of Egypt, they will be able to appeal to the precepts of the Founder himself of the Religion of Islam, who, in his famous Privilege accorded to the Christians in the fourth year of the Hegira at Medina, strictly enjoined his people to protect, wherever they might be, the judges of the Christians.†

TRAVERS TWISS.

The Temple, 14th April, 1883.

II.—AN ARGUMENT FOR THE CHANNEL TUNNEL.

ASSUMING, for the moment, the part of advocates for the proposed Channel Tunnel, in order that our readers may know some few points which may be urged in favour of this important project, we offer the following argument in its favour. Whilst considering what points of law might be argued in favour of the legal position of this Tunnel, our attention was drawn to an article published in this *Review* in August last, by Mr. H. J. W. Coulson, in which, after commenting on the view taken by the *Law Journal*, that there was nothing in International or Municipal

* The 40th article of the Great Charter of the Liberties of Englishmen runs thus: "Nulli vendemus, nulli negabimus aut differemus rectum aut justitiam."

† Sir Paul Rycaut in his work "On the Present State of the Ottoman Empire," published in London in 1668, gives an English translation of this document, and states that it was reported to have been found in the Monastery of Mount Carmel, near the Lebanon, and to have been transported thence to the King's Library, in Paris. I have failed to find any trace of the original in M. Delisle's Cabinet des Manuscrits de la Bibliothèque Impériale de Paris, unless it is comprised amongst the Arabic MSS., collected by the agents of the Minister Colbert. A French text of it will be found in A. de Miltitz's Manuel des Consuls, Tom. I, Appendice No. 1.

Law to prevent a French company, if so minded, from running a tunnel from the French coast, at any rate to the low water mark at Dover, and further commenting on the adverse view taken by an "eminent military authority" in the *Nineteenth Century*, who had dismissed the theory, advanced by our legal contemporary in "a few scornful words," Mr. Coulson proceeded to consider the whole question by the light of International Jurisprudence. He divides the questions involved in the discussion into three—First, what is the Law of Nations as to property in and possession of the bed of the sea? Second, what are the recognised limits seawards of the territory and jurisdiction of a state? Third, what means of protection and defence is a nation entitled to adopt for the purposes of self-preservation? In answer to the first and second questions, he arrives at the conclusion that there is nothing in the rules of International Law to prevent a French company from excavating their tunnel through the present unoccupied bed of the channel as far as the limits of the English dominion, or even from making such a tunnel French territory; also that the decision in the *Franconia* case appears to negative the general maxim of International Law, that a nation is presumed to occupy all territory within the limits over which it can maintain an effective control. Mr. Coulson therefore, has saved us the necessity of arguing the first two questions, for at any rate the opinion at which he arrives is in favour of the project whose lawfulness we are advocating. With regard, however, to the third and last question, he advances a theory which is against us, viz., that the British Government, without requiring the sanction of Parliament, solely by the inherent Prerogative of the Crown for the defence of the Kingdom, may, if it think fit, absolutely prohibit the construction of any works, either above or below ground, at least within the limit of three miles of the coast, and, in support of this theory, he informs us that *salus populi suprema*

est lex is a maxim, which has at all times, and in all countries, been held to justify the necessary destruction of private property for the public safety.

Let us examine the facts on which this argument is founded.

The undertaking may be divided into two parts:—1st, the territory reclaimed from the sea by the act of tunneling,*

* Of the magnitude of the Channel Tunnel Works at Sangatte, on the French Coast, it has justly been remarked in the *Standard* (December 27, 1882), there "seems to be little conception in England. The works occupy about two and a-half acres of ground. The sinkings are over 2,000 metres west of the former experimental sinkings, and consist of two shafts at a distance of about 83 ft. apart, the smaller, or No. 1 shaft, being seven feet in diameter, and the grand shaft, or No. 2, being over 16 ft. across. . . There is an engine-house with a Farcot steam-engine of 100 horse-power, working two sets of air-compressors of the Colladon type for driving the Beaumont boring-machine below ground. These air-compressors are capable of compressing to two atmospheres 350 cubic feet of air, or 125 cubic feet to eight atmospheres of pressures per minute. The submarine drift-way is being rapidly pushed forward, at about thirty metres, or nearly 100 feet advance per day. . . From the bottom of the great shaft the way into the submarine works is through a tunnel of considerable dimensions, worked out of the gray chalk by the pick and by blasting with gunpowder in the usual way. No less than 167 yards, about 12 ft. square, have thus been worked out. Beyond this the tunnel has been pierced for more than a quarter of a mile, circular in form and 7 ft. in diameter by the Beaumont drill. The submarine tunnel takes a curve in an easterly direction to avoid the geological disturbances at the Quenoes. When this is completed the tunnel will go straight towards England for the distance for which the concession has been granted by the French Government, nearly midway in the Channel." We may add that the Company have been in negotiation with people to make a double line tunnel through hard rock for a distance of three and a-half miles on the English side, and the price in round figures is to be £65,000 per mile. Upon that we may base the estimate of the cost of the Channel Tunnel, the difference in the substance to be worked through being taken as counterbalancing the extra cost per mile occasioned by the longer distance. Even if we take the actual cost at £100,000 a mile, the total would be only £2,400,000, and adding to that the connection with the Chatham and Dover and South-Eastern Railways, about £350,000, and estimating the connecting cost on the other side at about the same, the outlay would be very little over three millions. And it is believed on good authority those figures will not be found much under the mark.

extending from the French Coast to low water mark on the English Coast ; 2nd, the territory extending from low water mark on the English Coast to the terminus Railway Station, so many yards inland from the said low water mark.

With regard to the first part, it is now admitted on all hands that it is out of the Realm. The Common Law does not run there, the Statute Law does not run there, the Royal Prerogative does not obtain there. It is a "no man's land," a *terra incognita*, an unappropriated land. To whom does it belong? May we not answer in accordance with the Law of Nature, supplemented by the Law of Nations, that it belongs to the first occupant? If we suppose that an Island were artificially constructed (if such be possible) in the middle of the German Ocean by some *avant courriers* of Macaulay's New Zealander, would not that artificial Island belong to them? Nay, we will go further; we will suppose that an island naturally rises in the Channel. To whom would it belong? We answer, to the first occupant. It is an undoubted rule of the Law of Nature, that newly discovered or newly acquired territory, belongs to the first occupant. Occupancy is the most ancient evidence of ownership, and the most primitive of title deeds. "If an island grow up in the sea" says Britton,* "it shall belong to the person who is found in possession of it." Does not the unappropriated territory of the tunnel, approaching from the French coast, equally belong to the person who is found in possession of it? "*Littora*," says Bracton,† "*sunt de jure gentium communia, sicut et mare. Ideo ædificia, si in mari sive in littore posita fuerint, ædificantium sunt de jure gentium, et ita in hoc casu solum cedit ædificio.*" Were the fact possible, it would almost appear as though Bracton had the proposed Channel Tunnel in his mind when he wrote the above. The shore of the sea is common property. So is the sea.

* De Purchaz. Lib. 2, chap. 2. † Bracton, *De. Rer. Div.*, num. 5, cap. 12.

Therefore, constructions on this common property belong to the constructors; and as Bracton says, the very soil itself on which the constructions are founded, belongs to the constructors. The soil of the sea is an excellent property, the gift of nature. Those who are constructing the tunnel, are winning this property by their toil. Is not such, a good title by the Law of Nature, and of Nations also? If any-one should say that first occupancy is a bad title, we will ask, by what better title are many of the Colonies of every State in the world held?

So far we have been beneath the open sea. We are now within a few miles of English coast. There can be no doubt but that various statutes have, from time to time, been passed by the Legislature of this country which obtain over a certain portion of the adjoining sea. The Revenue Act, known as the "Hovering Act,"* passed in 1736, is a good instance of the nature of these statutes. Among other matters, it prohibited foreign goods being transhipped within four leagues of the coast without payment of dues. The "Customs Consolidation Act," 1876,† has borrowed many of its provisions from the former Act, and extends seawards for three leagues. The "Territorial Waters Act," passed in 1878,‡ extends for one marine league (or three miles) from the British Coast, and enacts that by virtue of its provisions any person, whether a British subject or not, who may commit an indictable offence on the open sea, within a marine league from the coast, shall be liable to be tried and punished by a British Court of Law.

The scope of these and other statutes of the same character is limited to the surface of the sea, and does not refer to the land below it. And even this limitation is, in its turn, further restricted to some particular act or offence. Thus the "Hovering Act" refers to revenue matters only.

* 9 Geo. 2, c. 35. † 39 & 40 Vict., c. 36. ‡ 41 & 42 Vic., c. 73.

The "Customs Consolidation Act" necessarily does the same. The "Territorial Waters Act" refers to indictable offences only. None of these statutes convey any domain to this country, they merely confer jurisdiction on its officers in certain matters, which may occur on the surface of the sea, for a radius of one, three, or four leagues around the coast, according to the statute under which the matter in question arises. That is all. So far there is nothing to prevent the construction of the tunnel, which is beneath the soil of the sea, which is without the realm, and which does not fall within the mischief of any statute. It would therefore seem that a tunnel may be constructed as far as our low water mark, without infringing any municipal law of this country. While, so far as International Law is concerned, the soil of the sea is but a neighbouring country, joining England, in precisely the same manner as Spain joins France. Who shall say that the Spaniard may not excavate a tunnel, through the Pyrennees, as far as the line of demarcation of French territory? By the same argument may not the Channel Tunnel Company, who are occupying the Tunnel territory, proceed with their work as far as the line of demarcation of the English territory?

Let us now pass to the second part; crossing the line of demarcation we reach the territory extending from low water mark, on the English coast, to the terminus railway station, so many yards inland from low water mark. This land has been bought and paid for. This land is within the realm, and by the Common Law, and by the Statute Law belongs to its purchasers. They may tunnel it, or run a line of rails along it, or erect a railway station, or semaphores and signals on it, in fact may treat it in what manner may seem best to them. All these objects are lawful, and in accordance with Municipal Law; International Law is neutral with regard to them.

But is it suggested that "the inherent prerogative of

the Crown may, if it think fit, prohibit absolutely the construction of any works either above or below ground ?"

The answer to this proposition must be twofold. Firstly, with regard to works below ground, that is, within the Tunnel territory without the realm ; secondly, with regard to works above ground, that is, within the purchased territory within the realm.

It is a theory which is, up to the present time, unsupported by any authority, that the Sovereign of one country can exercise a Royal prerogative over adjoining waste lands not part of his domain, unless he take possession of them ; and in such event they would become part of the realm, and subject to the ordinary laws. The quotations from Vattel and Ortolan, which Mr. Coulson, as advocate for the above theory adduces in support of the same, refer entirely to the maritime frontiers of a State, to the vast expanse of waters, stretching far and wide, where contraband trade, illicit commerce, and flotillas for sudden invasion, may be organised, secretly and silently, on a large scale. It behoves every nation to guard against such evils by the exercise of a vigilant supervision ; and International Law, not the Royal prerogative, concedes to every maritime State a right to make laws to avert those evils. But it must be remembered that all this applies to the *seaboard* only. Some States, like Switzerland, are surrounded by other States. A hedge, a mound, a wall, a rivulet, a mere nothing, forms the frontier line. But neither Vattel nor Ortolan, nor any other writer, suggests that any right appertains to Switzerland to prohibit the surrounding States from making tunnels, or forming lines of rail up to, and as far as, the above very imperceptible limits of demarcation. No, every country may utilise its territory and its soil, howsoever acquired, in such manner as it may think best, up to the boundary line of the adjoining State.

Even conceding for a moment that the law, as laid down

by Vattel and by Ortolan, may be applied to the Tunnel territory, it is nevertheless to be observed that the former expressly speaks of *imminent* danger. To assert that the Tunnel would be an imminent danger, or indeed be any danger at all, is a begging of the whole question. M. Thomé de Gamond, an eminent French engineer, and an ardent supporter of a Channel Tunnel, came to England in 1857, and found an enthusiastic listener in the person of the late Prince Consort. The Prince having mentioned the matter to Her Majesty, she was graciously pleased, we are told, to answer him in these words:—"You may tell the French engineer that if he can accomplish it, I will give him my blessing in my own name, and in the name of all the ladies of England." It is evident from the above, that in the highest quarters, there were no apprehension of the *imminent* danger theory, which has been launched against the Tunnel project, nor indeed were they conscious of any danger whatsoever. Nor have great English engineers, who have approved of the Tunnel, and elaborated plans concerning it, among others, the late Mr. Joseph Locke, Mr. Bateman, Mr. Fowler, Mr. Low, Mr. Brunlees, and Sir John Hawkshaw, suffered from this nightmare or incubus. Mr. Cobden stated that he considered "a submarine tunnel to be the true arch of alliance between the two countries," meaning of course France and England. In 1871 and 1872, a Liberal Government expressed to the Government of France its high appreciation of the utility of the work. On the 24th December, 1874, Lord Derby, the then Foreign Minister, said in a formal despatch, "Of the utility of the work in question, if successfully carried out, there appears no reason for any doubt, and Her Majesty's Government would therefore offer no opposition to it, provided they were not asked for any gift or loan, or guarantee in connection therewith." * The late Lord Derby left a record of his own views, to

* Corres. respecting Chan. Tun.; Parl. Blue Bk., Com. No. 6 (1875), p. 16.

the same effect, in a letter to his concurring colleague, the late Lord Beaconsfield, then Mr. Disraeli. In 1868, a petition was presented to the late Napoleon III., asking for "your Majesty's support for the construction of a submarine tunnel intended to connect the railways of England with those of the Continent—an eminently desirable work which has become necessary to facilitate the social intercourse which has so rapidly increased of late years between the inhabitants of France and England, and for the development of their trade and commerce." Signatures were attached to the petition of men of all shades of politics, and nearly all versed in practical affairs, such as Sir Thomas Bazley, Messrs. Bernard Samuelson and Jacob Bright, Henry Rawson, chairman of the Manchester Stock Exchange, and Mr. J. M. Bennett, chairman of the Manchester Chamber of Commerce. The fresh names recently added to the already long list of supporters* are more than sufficient to demonstrate that the Channel Tunnel is not widely looked upon as likely to prove an *imminent* danger, or even any danger whatsoever, to this country. We have yet to be shown that the Channel Tunnel would be a danger.

The citation of the law as laid down by Ortolan (*Dip. de la mer.* Ed. 1864. 1. p. 152, seq.) only asserts that "the security of a State, its duty to protect itself, create for it the necessity of watching particularly over its frontiers,"—with much more to the same effect. True. But the power of a State to protect itself, is dependent on the right of all mankind to free passage over the sea, and over that geological prolongation of the coast, forming the basis of the sea, which extends beyond

* The members of the Amalgamated Labourers' Union, and the Trade associations of London, Liverpool, Leeds, Birmingham, Bristol, and Manchester have already passed resolutions approving the scheme on the grounds of peace and industrial progress. On the 26th November last, twelve delegates of the Trades' Unions of England assisted at a great demonstration at Paris in favour of the Tunnel.

every maritime country. From the moment that there is sufficient depth for navigation there is at once a right of way, a means of communication—we may even call it a highway—open to the whole world by the Law of Nations. Nor can a nation which owns the neighbouring coasts, prevent passage over this great highway, or close the same. Such an act would be to oppose the very purpose for which the sea has been reserved by the voice of nations. Even could such an act be carried out by force, the right of passage would nevertheless remain. A nation may close its ports, its harbours, its bays and inner waters, by the Law of Nations, subject to its own Municipal Laws. A nation may similarly, in the language of Ortolan, "watch particularly over its frontiers" and guard them, by the Law of Nations, subject to its own Municipal Laws. But here the right ends. There is no word of Ortolan which speaks against the construction of a tunnel, subterritorial or submarine, on waste land without the realm.

We now return to the second part of the proposition, "that the inherent prerogative of the Crown may, if it think fit, prohibit works above ground." We are told that "even in times of peace, lands may be taken, buildings demolished, and erections prohibited, whenever necessity or expediency dictate such proceedings for the protection of the kingdom." Such acts may be done, it is undoubted, by virtue of any statute passed for that purpose, and also in some cases by virtue of well ascertained usage; as for example, a house may be pulled down if the next one be on fire, or a dam thrown up on private ground to prevent an inundation. But in such cases the danger must be *imminent*, not problematical, and when there is want of time to obtain legislation. The Sovereign cannot change any part of the Common Law, or Statute Law, or the customs of the realm,* nor can he create any offence by his prohibition, or proclamation,

* 11 Henry IV., 37; Fortescue *De Laudibus*, cap. 9; 18 Edw. V., 35, 36.

which was not an offence before; for that would be to change the law, and to make that an offence which is not, for *ubi non est lex, ibi non est transgressio*. The Statute 31 Henry VIII., cap. 8, which was repealed by 1 Edward VI., c. 12, gave more power to the king than he ever had before, or than any king has had since, and yet it is even there declared that he could not alter the Law, Statutes, or customs of the Realm, to cause prejudice to any person in his inheritance, liberties, goods, or life.

In 1546 it was resolved by the two Chief Justices, the Chief Baron, and Baron Altham, in conference with the Lords of the Privy Council, that the king could not create any offence, which was not an offence before.

It is obvious that the liberties of a country, however cautiously they are provided for by existing institutions, would remain in an insecure condition, if it were in the power of the Sovereign to change the Laws, or to suspend or dispense with them, at his pleasure. In 1766 an Order in Council was made, laying an embargo on all ships laden with wheat, or wheat flour. This was a matter of necessity or expediency; a necessity far more apparent than that of staying the Channel Tunnel. Yet what followed? In the next Session of Parliament it was found necessary to pass an Act,* to indemnify the Officers of the Crown who had carried the Order in Council into execution!

Again, the judgments of the Judges and Barons, in the celebrated "Ship Money" case, were delivered under great pressure from the Crown, were declared to be illegal in 1640, and are now valueless. "The extra-judicial opinion of the said Judges and Barons, and the said writs and every of them, and the said agreement or opinion of the greater part of the said Justices and Barons, and the said judgment given against the said John Hampden were, and

* 7. Geo. III., c. 7.

are contrary to, and against the Laws and Statutes of this Realm." So speaks the Statute 16 Car. I., cap. 14. The ancient custom of the realm, however, does deem it lawful, in time of war to raze the suburbs of a city to the ground for the common safety. In the same manner, some other acts are allowed in time of war by the ancient custom of this realm, which are not allowed in time of peace. But the nature and extent of such acts are limited and closely circumscribed. Thus:—

Martial law may be executed and exercised by the Royal Commission and prerogative in time of war, but not in peace, as was resolved in the Petition of Right; the Kings of England, in times of open war, might compel trained soldiers and others to come from their own counties to the sea coast and other parts for the necessary defence of the realm.*

The Kings of England in times of foreign war, might by their prerogative, seize the lands of all priors alien when they were extant in England.†

The Kings of England, when they had defensive wars with Scotland, might lawfully demand, receive, and take escuage of their subjects, and so did other lords of their tenants.‡

The goods of enemies may be lawfully seized by the Crown in time of open war.

By the custom of Kent, and the Common Law, the Crown may justify entry into a man's ground, and the making of bulwarks and entrenchments therein of defence, or offence of the enemy, in time of war.§

In time of war, men may justify the pulling down of

* 1 Ed. III., 4, 5, Parliament, M. Ca. 3.

† 27 Affs. 48, 38, Affs. 20, pag. 27, Affs. lib. 3, 2, cap. 78, Ed. III., 38, 27, Ed. III., 16, 40, Ed. III., 10, 14, H. IV., 36, 22, Ed. III., 43, 21, H. IV., 11, 12.

‡ Lit. Sect. 199, 95, 98, 100, 101, 102.

§ 8 Ed. IV., 73. Bro. Custome 40, and Trespass 406.

houses and suburbs, adjoining to a fort or city for their better defence and safety.*

It is apparent that there is a vast and infinite difference, in one and the self same act, in time of war and peace; and that the same act may be lawful in time of hostility, yet utterly unlawful in days of peace. And at the same time it should not be forgotten that in all the instances above mentioned, the liberal exercise of the Royal Prerogative is justified by the Custom of the Realm, supported by the *imminency* of the danger; and furthermore that the Prerogative is in all these cases exercised within the realm. The above customs are a part of the Common Law, and are not to be extended to cases where the danger is not immediate, nor imminent, nor where there is time for Parliament to intervene. It should never be forgotten that the Royal Prerogative is a weighty power, to be exercised for the public good alone, and to be exercised in a Constitutional manner. If such discretionary power be abused, Parliament may call the royal advisers to a severe account, and it is not unknown that impeachments have pursued Ministers, by whose pernicious advice the Prerogative has been abused. Without the authority of Parliament, no pretence of danger can, in our opinion, arrest the Channel Tunnel works within the realm, or make such arrest legal. It is against the Common Law of this land, which gives a man a freedom and property in his goods and estate, which cannot be taken from him but by his own consent. If we are told that the necessity or danger will not admit of the meeting of Parliament, it is, nevertheless, a fact that no necessity or danger can allow an act which is a breach of the law. It is an ancient custom, as we have before stated, that in time of necessity, or danger, every man is bound to defend the kingdom; and the Prerogative of the Sovereign, without Parliament,

* 14 H. VIII., 16. Bro. Trespass 406.

may command his subjects to do so, and may call for all men capable of bearing arms, and may require all ships for naval purposes. This is undoubtedly a prerogative of the Crown. But it is closely watched. Large as this power be, no Sovereign, of his own volition, can compel any *new* ships to be made.

The Prerogative of the Crown is limited, and justly so. The Sovereign is the supreme and sole legislator, but he can neither enact nor alter laws without the advice and consent of Parliament. The Sovereign is lord of the soil, but can dispossess no man of his inheritance, except by judgment of his peers. The Sovereign is universal occupant, but he cannot touch a blade of grass without leave of the Commons. The Sovereign is supreme in his judicial functions, but he must exercise them by his judges. The Sovereign is supreme in the execution of the law, but he can perform no act of executive magistracy without the assistance of others, who are responsible for their deeds.

The Prerogative of the Crown was instituted for the good of the people, and for the safety of the Commonwealth. But it is the emergency of the case, and situation of the time only, that can justify the use and exercise of the several large powers already specified. Should such powers be exercised in time of peace, should such powers be exceeded in time of war, or, lastly, should other and new powers be claimed, it becomes the duty of those who are entrusted with the tuition of public liberty to censure and suppress the pretensions.

The Star Chamber itself was founded on a principle of benevolence and mercy; it was established for the protection and redress of the poor, against the insults and oppression of the rich, "but," says Lord Clarendon,* "being confined by no bounds of law, it overflowed the

* Lord Clarendon's History of the Rebellion.

banks, that should have constrained it, and became a deluge of tyranny and oppression."

The plea of necessity, or pretence of danger, would warrant anything. If it be allowed to prevail, what is to become of national liberty? What authority is left to the Great Charter, to the Statutes, and to the Petition of Right? Mr. St. John, speaking in the House of Lords, in 1640, on the prerogative of the Crown, and on the enormous length to which that doctrine might be carried, ironically observed:—"But, my Lords, ship money is not the whole extent of them: ship money by these opinions is not due by any peculiarity in ship money, but ship money is therefore due because his Majesty is the sole judge of the danger of the kingdom, and when and how the same is to be prevented; because his Majesty, for the defence of the kingdom, may at his will and pleasure charge the people. This is the ground, and upon the same reason the compulsion may be as well for the making and maintaining castles, forts, and bulwarks, making of bridges, for transporting his armies, for provision of wages and victuals for soldiers, for horses and carriages; it may be multiplied *in infinitum.* It may be done when the good and safety of the kingdom is concerned; this extends to all things, and at all times: *Quia jacet in terra, non habet unde cadet.*" These remarks might be applied to the present situation.

If it be conceded that the Crown—or rather the Minister of the Crown, interested in the subject—is the sole judge of the danger, is the sole judge whether a submarine Tunnel should be completed or not, and whether it is or is not a danger, then by the same reasoning the Crown, or its representative, may interfere in any other matter however harmless or immaterial it be.

De Lolme, in his well-known Treatise on the Constitution, makes no mention, in speaking of the Royal Prerogative, that there is any prerogative whatsoever in

the Crown, to stay buildings or works, which may be thought to be a cause of future danger. And although much may be done by the customs of the realm in time of open or imminent war, as we have already seen, that is no proof that anything else can be done in time of peace.

It is clearly and conclusively settled by the above Statute (16 Car. I., cap. 14) that the Crown "is not the sole judge of the danger of the Kingdom."

By the Law of Nature, since the Sovereign is head, and bound to protect, therefore he must have wherewithal to protect; but this proves only that which no one denies.

Mr. Coulson speaks of the Royal Prerogative—but it is not precisely explained what prerogative—whether the prerogative natural of all kings, or the prerogative legal of the Kings of England. If people have not property of goods and liberty, they can be neither rich nor free. The liberty of the subject is what makes the Sovereign great, and the Royal prerogative has only for its ends to maintain the people's liberty; the question should be what prerogative the people's good and profit will bear, not what liberty the Sovereign absoluteness may admit, and in this argument it is more just to appeal to written laws, than to the breast of the Kings themselves. For National Laws are made by consent of Sovereign and people both, and so cannot be conceived to be prejudicial to either side; but where the mere will of the Sovereign is law, or where some Minister of his may allege what he wills for law on the King's behalf, no moderation or justice is to be expected. We all know that no slave or villein can be subjected to more miserable bondage than to be left merely to his lord's absolute discretion, and we all see that the thraldom of such is most grievous which have no bounds set to their lord's discretion.

It is not sufficient to allege that to forbid the Tunnel is an inseparable natural prerogative of the Crown, unless it be

proved that such prerogative be good and profitable for the nation. All supreme commanders are equal, and they have this essential, inseparable prerogative, that their power ought to be ample enough for the perfection and good of the people, and no ampler, because the supreme of all human laws is *salus populi*. To this law all laws must stoop, God dispenses with many of his laws rather than *salus populi* shall be endangered, and that iron law which we call *necessity*, is but subservient to this law. If a king should shut up the Courts of Justice, and prohibit all pleadings and proceedings, and refuse to authorize judges for the determination of suits, he would be held to do a most unkingly thing, and yet this may be as truly called a prerogative as to close or impede the Tunnel. We ought not to presume a prerogative, and thence conclude it to be law, but we ought to cite the law, and thence prove it to be prerogative. Even with regard to laws, the judges vary much; what is, and what is not Common Law, is a theme for endless contradiction and dispute.

The question is whether the Crown be sole judge of the danger, and of the remedy, or rather whether it be so sole judge that its mere affirmation, and notification, of a danger foreseen by it at a distance, or pretended to be foreseen, shall be so unquestionable that it may impede an important international work. If the danger be far distant, Parliament may be invoked to stay the Tunnel. It cannot be imminent until the Tunnel is completed, and it is evident that its completion will take longer time than a Parliament.

Unusual power, if it make not bad princes, yet it makes the good government of good sovereigns the less pleasing, and the less effectual for public good, and therefore it is a rule alike in law, and policy, and nature:—*Non recurrendum est ad extraordinaria in iis quæ fieri possunt per ordinaria.*

SHERSTON BAKER.

III.—COMMISSIONS OF GAOL DELIVERY.

DURING the progress of the last Winter Assizes, the learned Judges who itinerated in that part of England situated north of the Trent, caused quite a flutter of excitement among the members of the Junior Bar and the numerous other individuals who, either from interest or inclination, feel themselves attracted towards the Pleas of the Crown, by the promulgation of their views on the powers and duties of Commissioners of Gaol Delivery. Not that those views were, in themselves, either very novel or startling. For the last hundred years there had, at rare intervals, been found Judges, not always the most eminent of their body, but still Judges, who entertained peculiar views on the subject of Gaol Deliveries, and who acted in that respect very much as a policeman might do in clearing a street, as if it included the bodily riddance of all and sundry. But as such questions, when submitted to the Council of the Judges, which, up to 1849, was the recognised tribunal for the resolution of all doubts concerning the practice of the Criminal Law, had never been confirmed or favourably looked on by that body, the spectre was generally regarded as having been authoritatively laid to rest. It was, therefore, a rude awakening, after resting peacefully for some three score years and ten, to have it announced from the Bench that the Judges of Her Majesty's High Court of Justice had met in Council, and, under the presidency of the Lord Chancellor, had unanimously resolved that it was the duty of Judges of Assize, acting under the Commission of Gaol Delivery, to deliver (by trial or discharge) the gaol of each county into which they came, of every prisoner whom they found there awaiting trial, to whatever Court he might have

been committed. The astonished auditors might be thus fairly excused for asking—

> "Why the sepulchre
> Wherein we saw thee quietly in-urn'd,
> Hath op'd his ponderous and marble jaws,
> To cast thee up again!"

It is true that it was but last summer that the public were treated to the somewhat unusual spectacle of a learned Judge inviting a number of gaol-birds to deliver themselves from Maidstone Gaol at the end of the Assize, on their personal undertaking to appear at the Sessions to which they had been committed to take their trials, because no one had appeared at the Assizes to prefer bills against them to the Grand Jury (and were not likely to do so, seeing they had been bound over to prosecute at the Quarter Sessions), and that their bonds being of about the same value as their words, most of those gentlemen omitted to surrender at the appointed Sessions. Still, though doubtless this incident ought to have been noted as the shadow of coming events, no one seems to have seriously contemplated the possibility of its becoming generally applicable to the administration of the Criminal Justice of the country. Recent Judicial utterances had led the legal profession and the public to anticipate changes in exactly the opposite direction. For years past the theme of Judges of Assize, when presiding in the Crown Court, has been the waste of time, and the unnecessary labour cast upon Her Majesty's Judges, by the trial of paltry cases at Assizes, and Grand Juries have usually responded to the lamentation by making approving presentments at the close of their labours. True, we have not lately heard quite so much of the subject, since the curse of drink and the social elevation of the masses have been found more taking and popular topics on which to expatiate. Still the subject has never been wholly laid aside, and during the last decade

the air has been full of suggestions for remedying the delays that admittedly existed in the trial and deliverance of Assize prisoners. However much the doctors might differ as to the measures necessary to effectually remove the evil, they were all agreed that much might be done in that direction by an extension of the jurisdiction of Courts of Quarter Sessions. The Judicature Commissioners, Judges of Assize, Chairmen of Quarter Sessions, Foremen of Grand Juries, waxed eloquent over the speedy justice that would be witnessed, and the economy of time, and trouble, and money, that would be effected by sending burglars, and forgers, and bigamists, and a host of other unimportant cases, to Quarter Sessions. In furtherance of this object, and taking this common ground, Lord Bramwell, on the 5th June, 1882, in the House of Lords, presented a "Bill to extend the jurisdiction of Justices in General and Quarter Sessions of the Peace to cases of Burglary and Forgery," by which it was intended to make it permissible to the committing magistrates to send such cases for trial either to the Sessions or the Assizes. The principal grounds on which the promotor of the Bill sought, and obtained, the support of the other noble lords, were the absolute necessity that had arisen for the removal of the great number of trumpery cases from the Assizes, and the prevention of the great waste of Judicial power that ensued from their retention there—the saving of expense to prosecutors, and the more speedy trial, by relegating them to Sessions—and the inadequacy of any rearrangement of Circuits, or fusion of counties for Assize purposes, to do ought save add to the inconveniences and expenses of prosecutors and witnesses, increase the distances they had to travel, and the difficulties in the way of poor prisoners bringing up witnesses on their behalf. Yet the Bill never became an Act. Why? The Lord Chief Justice (Lord Coleridge), though offering no *active*

opposition to the measure, had no desire to see it become law, and thought it unwise to deal with the question in this way. "If" (his Lordship urged) "it was desired to reconstruct the whole system of the jurisdiction of Justices of Quarter Sessions upon a better or another principle, that was one thing; but merely to take away some cases, which *might* be important, from a tribunal where they were well tried, and did not occupy any great time, and transfer them to a tribunal which had not the same experience, was not the way to deal with the question." Lord Coleridge had been Chairman of a Committee appointed under the Chancellorship of Lord Cairns to consider and report on Circuit Jurisdiction, and that Committee had, in substance, recommended that the existing jurisdiction should not be interfered with—it pointed out that the relief afforded by the extension of Quarter Sessions jurisdiction would be but slight—that the business of Circuit was gradually lessening—and that it was rather desirable and advantageous to the Judges of Assizes (of course it was no concern of the public's) to beguile the tedium of attending to the weighty matters of the law by exercising themselves with the unimportant and paltry criminal cases. Hence, probably, this sudden upheaval of old notions, and anxiety displayed by Judges of Assize to deliver gaols "according to the ancient and immemorial custom of England" during the last Winter Assizes, and which, if carried out, would gradually very materially lessen the business of Quarter Sessions. And yet, it can hardly be that the Judges of the High Court are languishing in idleness, and are really desirous of adding to their labours, especially considering the somewhat lame and impotent conclusion to their outcry in February last. The expressed determination, however, to carry out their views of Gaol Deliveries in the future, as foreshadowed in the Home Office Circular recently issued, coupled with the

Judicial utterances at Assizes during the past two years, seem to point towards a "reconstruction of the whole system" on the lines laid down by the Judicature Commissioners some years ago, and a complete elimination of the Criminal business of the country from the system of Circuits, as they have hitherto existed. In view of these prospective changes, we venture to direct attention to the nature and history of the Commission of Gaol Delivery, in order that it may be seen how far the present action is justified by a reference to such, and the decisions, and practice hitherto prevailing, on the subject.

In the year 1299, the date of the First Commission of General Gaol Delivery granted to the Judges of Assize, the legal provision for the trial and deliverance of prisoners was not of a very complicated nature. Long before that time there had been at Common Law sundry persons—some elected by the people, such as Borseholders, Constables, &c., and others who, by virtue of their offices, were Conservators of the Peace; but the authority of those early Wardens of the Peace was strictly *ad conservandam pacem*, and it is generally agreed that they possessed no judicial authority, and they certainly had no Court of Record in which they could act as Judges; while Magna Charta, by Chap. 17, had declared that no Sheriff, Coroner, or Bailiff should hold Pleas of the Crown. The malefactor, therefore, against whom the hue and cry had been raised, or who was strongly suspected of felony, had usually to be kept in "durance vile" till the coming of the Justices in Eyre before he could be delivered, while the "lightly suspected" were "let to mainprize" till then. These Justices in Eyre had authority over all Pleas of the Crown and all actions, and by their coming into any county, and proclamation made thereof, all other authority—even the Court of Common Pleas and any other Court, except the King's Bench,—ceased during the Eyre, and was merged in it

(4 Inst. 184). But then the Eyre, at least from the time of Henry III., only came from seven years to seven years; and amid the lawlessness and corruption of that turbulent age, the long interval that might elapse between the apprehension of the felon and his trial, was not always a benefit even to the law-abiding portion of the community, and smoothed the way to much corruption. The traces of this are marked in indelible features on the Statute Book of the period; during the 120 years, beginning with 1275, when complaint is made "that the Peace of the Realm hath been evil observed heretofore for lack of quick and fresh pursuit after felons in due manner," (3 Ed. I., c. 9) and ending with 1395, when it is alleged that "thieves notoriously defamed, and others taken with the mainour, by their long abiding in prison, after that they be arrested, be delivered by Charters, and favourable Inquests procured, to the great hindrance of the people" (17 Ric. II., c. 10), the general corruption prevailing, and facilities afforded for its practice by the long intervals between the Eyres, is the one unvarying theme of the Statutes. At one time penalties are threatened if any Sheriff, Coroner, or other Bailiff "for reward, or for prayer, or for any manner of afinity" conceal the felonies done in their liberties; at another it is alleged that "notorious felons, and those of openly evil fame, and many guilty of murder, by favourable inquests taken by the Sheriff, are replevied till the coming of the Justices in Eyre, in order that they may, by themselves and their friends, procure jurors of the county who are favourable, and others they threaten, so that many murders and felonies are concealed and remain still unpunished." Again, among the Articles of the Eyre we find one directed against those who have "levied escapes of thieves or felons before they have been adjudged by our Justices in Eyre" (2 Ed. II., c. 2); and a further allegation that offenders have been greatly encouraged because Commissions of Gaol

Delivery and of Oyer and Terminer have been granted to persons procured by great men against the form of the Statute 27 Ed. I., so general had grown the corruption, and so bold the lawless. It was to meet evils such as these, and for the protection of the law-abiding against the multitude of reckless marauders thus let loose upon them, that the device was resorted to of sending Justices to deliver the gaols in the intervals of the Eyre, and it was with a view to the same end that, in 1299, that duty of delivering the gaol of the shire was cast upon the Justices of Assize.

The 27 Ed. I., c. 3, recites that because Sheriffs and others heretofore have let out by replevin notorious felons and openly defamed, being taken and imprisoned for murder and other felonies, and who are not repleviable, "contrary to the form of our statute of persons repleviable and not repleviable lately made—(viz., Stat. West. the first, c. 15)—whereby such irrepleviable malefactors so let out by replevin, in order to have themselves delivered deceitfully, they procure by themselves and their friends jurors of the county before the coming of the Justices Itinerant or others assigned for their deliverance, others they threaten; whereby, as well for fear of the Sheriff and others that let them at large by replevin, as for fear of the thieves or felons being so delivered, before the Justices assigned for Gaol Deliveries, murders and felonies are concealed, and so being concealed, remain still unpunished." After this lengthy recital the statute proceeds:—"We, for the utility of our realm, and for the more assured conservation of our peace, have provided and ordained that the Justices assigned to take Assizes in every county where they do take Assizes as they are appointed, immediately after the Assizes taken in their shires, shall both remain together, if they be lay; or, if one of them be a clerk, then one of the most discreet Knights of the shire being associated to him that is a layman, by our writ shall deliver

the gaols of the shire, as well within liberties as without, of all manner of prisoners, after the form of the Gaol Deliveries of those shires before time used, and they shall then also inquire if sheriffs have offended against the statute of West. 1st." And this statute—the foundation of the authority of Justices of Assize to deliver gaols—was sent to the Treasurer and Barons of the Exchequer; to Roger De Brabazon and his associates, Justices assigned to hear and determine pleas of the King; to John Mettingham and his associates, Justices of the King's Bench, and they were commanded "all the aforesaid articles, so far as they concerned them and the parties pleading before them, to be wholly and unshakenly observed."

In speculating upon the form of the Gaol Deliveries before time observed, it must be borne in mind that the Sheriff, who by statute had the keeping of the gaols, had cast on him the duty of pursuing and arresting notorious felons, and imprisoning them till the coming of the Eyre, and of letting to mainprize those lightly suspected; while then, and all through the succeeding reigns, on an indictment found (then the first step in a prosecution, and the only legal warrant for the issue of process to secure the due apprehension, or presence of the accused to answer the charge, and but the equivalent of the modern information before a magistrate) before a Warden of the Peace, he issued his precept to the Sheriff to apprehend the person accused, and he took and brought him before the Justices in Eyre for trial. It was therefore to the Eyre that the cognizance of all Pleas of the Crown was committed, and there alone that all prisoners were delivered. And as in this respect, the Justices of Assize succeeded to most of the powers of the Eyre, and eventually, in the reign of Edward III., superseded them altogether, they delivered the gaols of all prisoners—there being no other Court possessing jurisdiction over any of them, and all therefore fell

in the ordinary course of law to be tried before them. The reign of Edward III., however, witnessed the introduction of changes in this respect. After the deposition of Edward II., fears were entertained of popular risings in his favour, and with a view to securing timely notice of any such movements, and the more readily to repress them, Parliament, in the 1st Edw. III., c. 15, ordained that, in every shire, there should be men assigned to keep the peace, "so that for this cause "(wrote Lambard)," the election of the simple Conservators of the Peace was first taken from the people and translated to the assignment of the King." Within three years, those keepers of the peace were invested with the additional authority to take, but not to try indictments—these being sent for the latter purpose before the Justices of Assize and Gaol Delivery (4 Edw. III., c. 2); and no further material alteration took place till the 18th year of the same reign, when it was ordained that the Conservators of the Peace might be empowered by commission from the Crown to hear and determine felonies. When, in obedience to that statute, it was prayed by the Commons in the 20th Edw. III., that a power to hear, &c., might be given, it was answered that the King would appoint learned persons for that office; and so in the 21st Edw. III., the Commons being charged to advise the King as to the best way of keeping the peace of the kingdom, they recommended that six persons in every county should have the power of keeping the peace. In conformity with those petitions and statutes, commissions were at various times issued, assigning certain persons to execute the powers which the King was authorised to confer, and in addition, a special charge was introduced to enforce observance of the Statute of Winton, 2 Edw. III., and the Statute of Northampton, 20 Edw. III., with some others; but it was not till the 34 Edw. III., c. 1, that the general standing authority given to the Justices of the Peace to hear and determine felonies and

trespasses, thereby constituting them complete Judges of a Court of Record, was conferred, they having previously had no such authority, and being from this time forward commonly called Justices, and being made what Lord Holt called "complete Judges." From time to time their jurisdiction was enlarged by various statutes and regulations, made as to the times for holding, and the number of, their Sessions; till about the 3rd Elizabeth, the form of the Commission of the Peace was settled by Sir Christopher Wray, C.J., of the Queen's Bench, and the other Justices, and has since continued the same, with little variation. That gives them jurisdiction to punish offenders against any ordinances and statutes for the good of the peace, and for the quiet rule and government of the people. The chief object of this institution being the "preservation of the peace against personal wrongs and open violence," according to Hawkins, they have no authority to try any offences not having such tendency unless express power is given by some statute (*R.* v. *Gibbs*, 1 East, 173), and though by the statute 14 Ed. III., c. 1., they may try all felonies and trespasses whatsoever, they seldom try greater offences than larceny—their Commissions providing that in cases of difficulty they shall not proceed to judgment, unless in the presence of one of the Justices of the Queen's Bench or Common Pleas, or of the Justices of Assize; and in the greater felonies they are expressly directed by statute 1 and 2 Ph. and M., c. 13, to send their examinations to the next Gaol Delivery, while all indictments of a serious nature found at Sessions are usually transmitted by the Justices for trial at the Assizes.

Such being the nature of the jurisdiction over Pleas of the Crown, conferred by the legislature on Justices of the Peace, it would naturally be concluded that, to that extent, the Justices of Gaol Delivery were relieved of the duty of delivering the gaols in the shires. For the Justices of Gaol

Delivery, though they succeeded to many, did not inherit *all* the powers of the Justices in Eyre. Unlike them, or even the Justices of the Queen's Bench, their advent did not terminate or suspend anything or anybody, except the capital offenders, and the jurisdiction of the Justices of the Peace remained unaffected by their presence (Bro. Com., 8). Before the 4th Edw. III., c. 2, Justices of Gaol Delivery could not proceed upon an indictment taken before the Guardians of the Peace (Year Book, 15 Henry VII., pl. 5.), and though they might deal with all whom they had power to try, they could not discharge those who would not in due course of law fall to be tried by them. Thus they could not discharge persons made triable in the Queen's Bench, or under a Special Commission (*R.* v. *Platt*, 1 Leach, 157), the whole scope of Gaol Deliveries being to insure that every prisoner within the county should have the benefit of deliverance, and even under the Habeas Corpus Act (31 Ch. II., c. 2) it was held that an application to be tried, or discharged for want of indictment, must be made to that Court only which had jurisdiction to try the offence, and that the Justices of Gaol Delivery could not entertain a case triable elsewhere (*R.* v. *Platt*, 1 Leach, 169, and *R.* v. *Yates*, Show. 190). These same cases, decided so long ago as 1777, also clearly establish that though the power of Justices of Gaol Delivery to do "what to justice appertains according to the laws and customs of England," extends to all prisoners committed for crimes, they are only to try those who are triable before them in the ordinary course of law; and if they find prisoners who are committed to take their trial in other counties, or before other jurisdictions, they are to take notice that it is a legal detention for a legal purpose, and remit them to the proper custody. The same doctrine was affirmed in 1810 in a question submitted to the Judges from Stafford Assizes. At the Stafford Lent Assizes and General Gaol Delivery, held before Mr. Baron Wood in

1810, there were several prisoners in the county gaol (whose names were not in the Calendar) who had been committed by a Justice of the Peace for different larcenies—some "until they should be discharged by due course of law;" others "until the next Quarter Sessions" (before which the Assizes had intervened). These prisoners at the close of the Assizes applied to be discharged, there being no Bills preferred against them, and they were discharged by proclamation—the learned Judge thinking it his duty to do so under the Commission of General Gaol Delivery. He, however, submitted the following question for the opinion of the Judges, in order that one rule might be uniformly observed on similar occasions. "Whether a Judge might at his discretion have legally left the prisoners in custody to be tried at the Quarter Sessions, some of the commitments being for petit larceny, and others for grand larceny, yet small offences, and all proper to be tried at the Quarter Sessions?"

"In Easter Term, 1810, the Judges met. The majority of them were of opinion that it was not imperative on a Commissioner of Gaol Delivery to discharge all the prisoners in the gaol who were not indicted; but that it was discretionary in him to continue on their commitments such prisoners as appeared to him committed for trial, but the witnesses against whom did not appear, having been bound over to the Sessions."

So firmly established was this considered to be that, in 1819, the same Mr. Baron Wood in his endeavour to observe it, fell into a mistake of the opposite kind, by refusing to try at the York Assizes an Indictment that had been found at Quarter Sessions and afterwards transmitted by the magistrates to the Assizes for trial—the learned Judge thinking he had no authority on those proceedings to try the prisoner, and ordering his discharge by proclamation. "The reasons which occurred to the learned Judge at the

time for refusing to try this prisoner were" 1. That he had never done anything like it before. 2. That he could only try an Indictment found by the Assize Grand Jury. 3. That the labour of Commissioners of Gaol Delivery would be increased if Justices could at their discretion send on their Indictments to them. Of course these reasons were all wrong, and when the Judges met in Easter Term, 1819, they were of opinion that the prisoner ought to have been tried at the Assizes—that kind of case having been provided for by the terms of the Commission of the Peace (*Rex* v. *Wetherell*, R. & R. 381). In 1848, Patteson, J., laid down that "the Commission of Gaol Delivery applies only to the prisoners in the County Gaol, and not to those in the House of Correction. Thus, in Yorkshire, the Judges deliver York Castle, but do not take any notice of a considerable number of prisoners who are committed to the Wakefield House of Correction for trial at the Sessions, which are held after the Assizes" (*Reg.* v. *Arlitt*, 2 C. & K. 596): showing that in that learned Judge's opinion the delivery of "all manner of prisoners" did not necessarily involve the trial of Sessions prisoners who would usually be found in the House of Correction of the County, though the scope of Gaol Delivery is said to be that every offender within the county might derive the benefit of deliverance.

Whatever the jurisdiction conferred on Justices of the Peace over Pleas of the Crown, it is certain that their power to try, or otherwise deal with, prisoners is not determined, or merged, or suspended, or in any way affected by the coming of Justices of Assize and General Gaol Delivery into the county. The existence of the two Commissions is consistent; the Court of Assize is not (like the Court of Queen's Bench) in any way a Court of Appeal or one exercising any control over the Court of Quarter Sessions, and the Justices not sitting in Quarter Sessions during the

presence of the Assizes in the county is merely from considerations of convenience and respect, and not from want of power (*Smith* v. *The Queen*, 18 L.J. (M.C.) 207). That it might be unseemly and inconvenient, is the utmost that has been urged against the sitting of the Sessions and Assizes at the same time; in 1826 the Law Officers, Sir S. Shepherd and Sir R. Gifford, and later, in 1841, Mr. Justice Coleridge, at Gloucester Assizes, advised the Justices that when the Quarter Sessions of a county occurred while the Judge of Assizes was proceeding with the trial of prisoners in that county, the better course was, not to try any prisoners, but to dispose of all their other business, and then to adjourn to a future day (9 C. & P. 791), and as the Spring Assizes and the April Sessions often clashed, power was, in 1834, given by the Legislature to the Justices so to fix the Quarter Sessions, when occasion required it, as to avoid such clashing with the Spring Assizes (4 & 5 Wm. IV., c. 47). The Criminal Law Commmissioners also, in their 8th Report, in recommending the restriction of the Quarter Sessions from dealing with capital felonies—a recommendation afterwards adopted in the 5 & 6 Vict., c. 38, which curtails and further defines their jurisdiction—seem to recognise them as a distinct and separate jurisdiction.

Such being the judicial interpretation put upon the words " Delivery of the Gaols," in order to obviate any mistake in the future, a change was, about the year 1852, introduced into the *words* of the Commission by which the duty of the Justices of Gaol Delivery was specifically restricted to such cases as had been committed to the Assizes. We say *in words*, because in spirit and intention, its scope was the same—being merely the authoritative judicial interpretation that had been put on the ancient form of words. So the Delivery of Gaols proceeded without complaint for many years. But people began to agitate for a reform of our

Judicature—complaints were made of the undue length of time accused persons were kept awaiting their trials at the Assizes (it was not to the Sessions cases, for these were tried, at least four times a year in every county, and in the more populous counties and larger boroughs, eight, and even nine, times a year, as, *e.g.*, at Liverpool), and various suggestions were made for remedying the admitted evils of the existing system of Assizes.

The Judicature Commissioners made certain suggestions for the purpose of facilitating the despatch of Assize business, and among these were certain recommendations of the Judges as to Circuits, in favour of a redistribution of the existing Circuits, involving the abolition of the Home, and the partition of the Northern Circuits—which recommendations were subsequently adopted. The grouping of counties for Assize purposes was also suggested and adopted, though the results were not encouraging; and there was further a general leaning towards an extension of the jurisdiction of Quarter Sessions. Some of the Commissioners, however, were in favour of the total severance of Criminal business from the system of Assizes, and the relegation of all Criminal cases to the Quarter Sessions, aided by Commissioners in the shape of Judges from the High Court, for the trial of the more important cases after the manner of the Central Criminal Court; and the Judicial utterances of the past two years followed, as they have been, by the Resolution of "all the Judges of England" and the Home Office Circular, indicate an intention to adopt some such scheme—or at least to treat "Assizes and Sessions as one judicial machine for the purpose of trying prisoners," as was suggested by Lord Justice Brett.

Yet it is hard to reconcile this sudden change of front on the part of the Bench, and this determination to revert to the "ancient and immemorial customs of England," with the advice tendered by Her Majesty's Judges to the Lord

Chancellor, comparatively recently, on the working of the present Circuit system.

In 1878 the Lord Chancellor invited the advice of Her Majesty's Judges on the working of the present Circuit system, and on the best mode of combining the work of Assizes with that of Quarter Sessions, on the assumption that there were for the future to be four Gaol Deliveries in the year; whether it was desirable to enlarge the jurisdiction of Quarter Sessions; how the grouping of counties for Assize purposes had worked, and generally as to what could be done towards economising judicial time on Circuits. That Committee of Judges was presided over by Lord Chief Justice Coleridge, and in their Report they said: "We think no change necessary, and therefore that none is desirable, in the present times of holding the Quarter Sessions, except to extend the power of adjournment, so as to prevent their ever clashing with the holding of the Assizes. But we think it very desirable, and we recommend, that for the future the Commission for all the Assizes should, as is now the case with the Commission for the Winter Assize, provide that the Judges should not be bound to deliver the gaols of prisoners committed for trial at the Quarter Sessions, but only of those committed for trial at the Assizes. The Quarter Sessions would thus four times a year try Quarter Sessions cases, and the Judges would four times a year try Assize cases." They further reported that they did not object to the addition of "simple burglaries" to the offences triable at Quarter Sessions, as "on some Circuits it may effect an appreciable saving of the time to be devoted by the Judge to the trial of criminals." "With regard to the grouping of counties for Assize purposes, we are unanimously and strongly of opinion that it has worked ill; and so far from suggesting any extension of the practice, we entertain no doubt that it ought to be discontinued. It may, it probably does, effect

some saving of judicial time, but it does so at the expense, and to the injury of, every other class of persons engaged in the administration of criminal justice." That Report was signed by the whole six Judges composing the Committee; but Lord Justice Brett added a Report of his own, in which he propounded his views, "treating the Assizes and Sessions as one judicial machine for the purpose of trying prisoners," to the carrying out of which it would be essential that "the Judges should at the Assizes try all prisoners then in prison or committed for trial."

This Report having been forwarded to the Home Secretary for his consideration, he, in his letter to the Lord Chancellor, wrote—"I agree entirely in the suggestion of the Judges, that Commissions for criminal business, should, for all Assizes alike, be so framed as to relieve the Judges of the obligation to deliver the gaols of the prisoners committed for trial at the Quarter Sessions. If this were done, there would be no overlapping of jurisdiction, and no reason why Quarter Sessions in counties (as in boroughs) should not be held at the same time as Assizes, unless, indeed, the existing court accommodation is not sufficient to allow of both being held at the same time."

This last sentence of the Home Secretary contrasts strangely with the concluding words of Coleridge, J., in 1849, when delivering the Judgment of the Court in *Smith* v. *The Queen*:—"We cannot" (he says) "dismiss this case without expressing our opinion that it would be highly inconvenient and improper, generally speaking, for the magistrates of a county to hold their Sessions concurrently with the Assizes, even in a different part of the county. Of course, we cannot anticipate that they should hold them concurrently at the same place."

Within the last two years, however, a change has been gradually stealing over the Judicial mind, quickened, apparently, by the impossibility of carrying out the plan of having

"Assize Counties" for Circuit purposes as long as crime was linked with it.

Mr. Justice Williams, who was the first to announce this new resolution of Her Majesty's Judges, was himself a thorough-going reformer; as a Member of the House of Commons he had not hesitated to express his belief that the time had come when Judges' Marshals, Javelin-men, and all the other barbaric pomp attending Assize should be swept away; from the Bench he has repeatedly impressed on Grand Jurors the absurdity of Judges of Assize having periodically to itinerate in counties where but one or two prisoners awaited their deliverance—sometimes none at all; and at Exeter Summer Assizes, 1881, he even ventured to indicate the means by which, in his opinion, the evil might be remedied. "The Sessions and Assizes might" (his Lordship said) "be held together, so that by this arrangement all the prisoners in gaol may be delivered, tried, and disposed of at least once a quarter, and if it is thought necessary by the local authorities to have the assistance of a Judge from the High Court of Justice they can demand it; if not, they need not do so." The recent announcement of the resolution of all the Judges of England by which the delivery of the gaol is declared to mean the trial, or the discharge for want of trial, of all prisoners in the gaol, to whatever jurisdiction committed, is only the natural issue of what has been going on during recent years. This new interpretation has certainly the great merit of narrowing and simplifying a Judge's duty; and though both Lord Justice Brett, at Chester, and Mr. Justice Williams, at Liverpool, were careful to explain that the deliverance of a prisoner by no means necessarily involved his trial, or discharge in default of prosecution, and that, under certain circumstances, it might involve his remission to gaol, they very clearly indicated that for the future deliverance would mean trial or discharge and nothing else—a meaning still

more unmistakably indicated by the Home Office Circular subsequently issued, at the suggestion of the Judges, for the guidance of Clerks of Petty Sessions in framing their commitments.

Something of the sort seemed absolutely necessary, as but little guidance was to be gleaned from the action of the Judges last Assizes; for, while at Chester, Lord Justice Brett remitted all the Sessions prisoners to gaol to await their trial at the Sessions, Mr. Justice Williams, at Liverpool, sent back all the City Sessions prisoners to gaol, but set at liberty all those committed to the County Sessions; while at Manchester not the slightest notice was taken of Sessions prisoners, who were subsequently delivered, to the number of nearly 70, by the learned Recorder of that City.

If the Judges of Assize, who but the other day were complaining that the cases then sent before them were more fitted for the Sessions, are, for the future, to insist on trying both the Sessions cases and their own, they ought, to be consistent, under the Commission of *Nisi Prius*, to determine to try all the County Court cases, and those in the numerous other local Courts within their Circuits, some of the Judges and Assessors of which are so continually bemoaning the want of sympathy and appreciation manifested towards them by the ruling Powers—as we feel sure their attention would be welcome in that quarter.

It may be very praiseworthy in the Judges of Assize to devote their energies to the trial of Sessions cases, but the extra cost involved in such a proceeding (a prosecution at Assizes costing on an average just double that of a Sessions case) is not likely to be appreciated by the British taxpayer, from whose pockets such additional cost must ultimately come. And should Judges insist on prosecutors and their witnesses coming to Assizes, and then, after keeping them dangling about for a week, tell them to depart

hence and give their attendance at the Sessions, we fancy the practice would not be fated to endure long.

That the delivery of a gaol should mean simply the due prosecution, or discharge for want of prosecution, of all the prisoners confined there and awaiting trial, before the various Courts on whom jurisdiction to try them has been conferred, seems in accordance with the plain meaning of the words. The earlier cases show that Justices of Gaol Delivery could only discharge those who in the ordinary course of law would be properly triable before them; that originally all Pleas of the Crown were triable before the Justices in Eyre, and all could then be discharged or otherwise by them; and that since their abolition certain offences have been made triable before other jurisdictions, *e.g.*, The Queen's Bench or Special Commissions, and with these Justices of Gaol Delivery cannot deal—they can only take note that the prisoners are legally detained, and remit them to gaol. The resolution of the Judges in 1810 recognises the same principle, and shows that the jurisdiction of Quarter Sessions is equally to be recognised by the Justices of Assize. If a Justice of Assize may properly remit Sessions prisoners to gaol to await their trial at the Sessions, it can be no part of his duty to try such cases—for the Commission does not leave the performance of his duty to discretion but according to law, and to go beyond that must be to exceed the terms of his authority. Delivery of the Gaol, in short, does not necessarily mean trial or discharge, except to those prisoners who have been committed to the Assizes, and may, and does, mean the remission to the proper custody of such as have been legally committed to other jurisdictions; and it is because the recent resolution, as conveyed in the projected action of the Judges, and further illustrated by the Home Office Circular, is too narrow a definition, and embraces only one of its terms, that we venture to take exception to it. Nor do we well

see how Clerks to Justices can legally follow the Home Office advice by binding over witnesses in all cases to Assizes or Sessions whichever may happen first—the Legislature having directed them to send only the greater felonies and cases of importance before the Justices of Gaol Delivery, while as to all the others both the Legislature and the Commission of the Peace require the Justices themselves to proceed to hear and determine them and administer reasonable chastisement according to law.

In drawing attention to this subject, it is no part of our purpose to deny the desirability of effecting changes in the administration of the Criminal Law, or of promoting Legislation with that view; all we suggest is that such results cannot be effected in the way proposed, without a complete reversal of past practices and of what have been hitherto considered settled Principles.

At the Spring Assizes commencing at Manchester on the 14th April, there were 50 criminal cases tried, only 22 of which were Assize cases, the other 28 being Sessions cases and the pettiest of larcenies. Some of these were from the confines of the county, necessitating the conveyance of witnesses at least double the distance they need have travelled had the cases been tried at Sessions, and the fees in all those cases were double the average Sessions fees. What the Grand Jury thought of this, will be best conveyed in their own words, as addressed to Mr. Justice Day at the close of their labours :—

"The Grand Jury wish to express their regret at the alteration in the terms of the Commission which necessitates the trial at the Assizes of a certain number of prisoners charged with very trifling offences usually dealt with at Quarter Sessions. They are of opinion that the change will be attended with considerable inconvenience and increase of expense, and that, as Sessions are held at short intervals, no real hardship would arise to prisoners

from a long detention in gaol, if they were left to be tried as formerly.

"His Lordship said he had received the presentment with much satisfaction, and would forward it at once to the proper quarter."

At Liverpool, where the Assizes open on the 26th April, and where an interval of nearly a month will have elapsed since the last Sessions there, the Judges are likely to have to deliver some 60 Sessions cases—if one may form any estimate from the average "crop" of such a period—in which case, the Judges at least can hardly hope for a speedy deliverance.

JOHN KINGHORN.

IV.—NATIONALITY AND THE COMMON LAW.

THE recent remarkable case of *De Geer* v. *Stone* * raises the question how far the *status* of natural-born British subjects extends at Common Law. Of the three paragraphs in the head-note to the case as reported in the *Law Reports*, the first deals exclusively with Statute Law, the second and third with Common Law. Passing over the first for the present, we find that one of the propositions laid down as to Common Law is thus summarised in the second paragraph of the head-note: "There is no foundation for the notion that by the Common Law of *England* the posterity of a natural-born British subject, though born abroad, must be treated as British subjects for ever." This view has no doubt been generally admitted, the contrary one being confined to the somewhat scanty *dicta* and opinions referred to in the argument in the above case, which show indeed the existence of such a "notion" appearing from time to time among lawyers, but are insufficient to uphold it as

* L.R. 22 Ch.D. 243; 52 L.J. (N. S.) Ch. D. 57.

correct. There is more difficulty in fixing the exact limits of the other proposition as to Common Law on which the judgment is based. It is thus stated in the third paragraph of the head-note: "The rule that the children born abroad of ambassadors in the service of the Crown of *England* abroad, are treated as natural-born British subjects, does not apply to the children born abroad of officers in the military service of the Crown in foreign parts." The other reports which have appeared do not materially differ, with the exception of that in the *Law Journal* Reports, where the proposition is thus limited: "By the Common Law a person born in a *friendly* foreign country, where his father is in the military service of the British Crown, is not a British subject." The judgment delivered does not seem to bear out the limit suggested by the word in italics. It would rather appear that the judgment asserts that a child born abroad of an officer in the military service of the Crown in foreign parts is not at Common Law a natural-born subject, whether the British force to which the father is attached is or is not in hostile occupation of the part of the country where it is stationed, and whether or not the actual place of birth is within the lines of such force. This question was but lightly touched on in the argument, the stress of the reasoning employed by counsel for Lord Reay being directed towards upholding the other doctrine as to Common Law, which was neatly described by the Attorney-General as "the perhaps for ever doctrine," and the rejection of which by the Court is stated in the second paragraph of the head-note above quoted. Under these circumstances it is no wonder that the Court came to the conclusion enunciated in the third and concluding paragraph, and it is with the utmost respect foi the learned Judge who decided the case, that it is now attempted to impugn the correctness of a conclusion which, on the facts and authorities as presented to him, was all but inevitable.

The importance of British citizenship at Common Law has been so lessened by the legislation beginning with 25 Ed. III., st. 1, and ending with the Naturalization Act, 1870, that such questions are not likely often to trouble the Courts. Many years may pass before the question is again raised. If the decision in *De Geer* v. *Stone* should meanwhile have remained unchallenged, and found its way into the text-books, it would then naturally be treated as unquestionable law. It is possible that such a question may arise some day in connection with a peerage or a franchise, as suggested by the Attorney-General, or (it may be added) in cases relating to ownership of British ships. Nor would it be difficult to imagine questions purely within the domain of Private Law, the determination of which would depend on the Common Law distinction between subjects and aliens. But in any case no apology seems necessary for investigating the limits of the true doctrine on a subject which properly falls within the scope of Municipal Law, yet, as it were, presses closely on the skirts of International Jurisprudence.

It does not appear that any very definite statement on the subject is to be found in the earliest of "those ancient text-writers to whom we look up as authorities." The authorities used in the argument of the case virtually begin with the Parliament Roll, 17 Ed. III. (1343). At first sight there may be a difficulty in deciding whether this, or any part of it, is of statutory force or not. The various functions of Parliament and of its constituent members were not clearly defined at that date. On the whole it would seem that on the first occasion described, when the Archbishop of Canterbury brought the matter before the Houses, there was nothing beyond a strong declaration of opinion as to the Common Law given by the prelates and grandees, but that on the second there was at least some attempt to lay down preliminaries for actual legislation, though the final passing of a Statute was deferred till the

next Parliament. So far this agrees with the view expressed by Kay, J., in his judgment. He points out that the statement in the Parliament Roll draws a distinction between the children of the King and the children of others, among whom are afterwards enumerated the children born of persons in the service of the King. With regard to the former it is emphatically declared that there was no doubt, but with regard to other children, great doubt and difficulty are said to have existed. So far it would be difficult to take any exception to the words of the judgment. But now comes in room for divergence. On the words as they stand, the doubt and difficulty may be understood in two ways. There might be doubt whether children born abroad of any or some persons in the service of the King were natural-born subjects. Or the doubt might be, whether, (granting that children so born were subjects) a similar privilege extended any further to children not so born, *e.g.*, to remoter issue of persons in the service of the King, or to children born of parents not in the service of the King, abroad for other reasons, with or without the King's express license. Kay, J., appears to have considered the doubts to be of the first kind. On the view of the Common Law taken in the present paper, they would be of the second kind, and for the following reasons :—

1. The words in this Parliament Roll itself are strongly in favour of the claim of children born of parents in the King's service. "Endroit des autres Enfantz, accordez est en ce Parlement, qu'ils soient aussint enheritez quen part qu'ils soient neez en le service le Roi." In the judgment the word "accordez" is paraphrased by "allowed," and treated as by no means emphatic, in fact as admitting of "great doubt and difficulty." Whatever the exact shades of meaning of which this obsolete term "accordez" may be capable, it is evidently most unhappily chosen if intended to express a conclusion in itself subject to great

doubt and difficulty, but perfectly suited to a conclusion unanimous and certain so far as it expressly goes, while accompanied by a doubt whether an even wider conclusion might not legitimately be established. "Accordez" was in fact at that date used in statutes. It is employed in 25 Ed. III., st. 1, quoted in the report of the case in question, and there has apparently the force of our modern phrase "Be it enacted." It is not likely, nor is it for a moment contended, that such is its actual force here. But it is confidently submitted that here and elsewhere its use is incompatible with the enunciation of any doubtful hypothesis. Here it is surely an expression of unanimity of opinion.

2. It is not said in so many words, nor does it seem to be fairly implied by the whole context, that any doubt existed at all as to the position of children born abroad to parents in the King's service. It is as to children in general, other than the King's children, that the doubt attaches in the first instance; and the generality of such doubt is further restricted by the sentence above quoted. By a process of elimination, the class subject to doubt is gradually brought down to include only children born abroad not being children of the King or of the King's servants.

3. It seems only reasonable to attribute part of the doubt and difficulty to that very theory, the reverse of which was established in *De Geer* v. *Stone*, and is alluded to in the second paragraph of the head-note above quoted. Granting that there is no solid foundation for the notion that the issue of British subjects born abroad continue to be subjects unless and until some act sufficient to denationalise them, yet the existence of such a notion cannot be denied. It is one which harmonises well with the old feudal ideas of proprietary rights of the lord in his liegeman, of that personal tie of allegiance which, in theory at least, is independent of the accidents of time and space and dissoluble only

at the will of the superior. Existing as a notion or vague impression, rather than as a positive assertion, it can be traced through the *dictum* of Hussey, C. J., in 1 Richard III., and the argument of Lord Bacon in *Calvin's case* down to what is probably its very last appearance in Mr. Westlake's argument, and the death blow of the notion itself in *De Geer* v. *Stone*. It were rash to say that this notion was not entertained, as at least a possible hypothesis, by some of the Prelates and Grandees and gentlemen of the law in 17 Ed. III., and by all or most, as one requiring further examination and consideration "pur ouster tote manere d'Empeschmentz," before the whole question could be put on a satisfactory footing.

4. This view is strengthened by examination of the circumstances connected with the proceedings in 17 Ed. III., compared with what is known of the Act passed in 25 Ed. III. In the Parliament of the former year, we find the Archbishop twice bringing the matter before the House. It may be assumed that this persistence was not dictated by love of abstract truth, but rather by the pressure of some actual case or cases. Now in the second year a well-known Act was passed *de ultra mare natis*. The terms of the Act make it clear that, among other puposes, it was passed to meet the cases of Henry de Beaumond, Elizabeth de Bryan, and Giles Daubeny. It is also clear from the wording of the Act, that these persons were to inherit as children of English subjects simply. It is a fair inference from the words "born out of the ligeance of *England*" that, as will be shown more fully presently, their parents were not at the time of the birth of these children in the King's service. And it seems a probable conjecture, from the admitted connection of the proceedings in 17 Ed. III. with the Act of 25 Ed. III., that the cases of these persons, or some of them, were the cases in reference to which the Archbishop raised the discussions in Parliament in the earlier

year. So far then there is cumulative evidence raising a strong probability that the doubt and difficulty concerned children of parents not in the King's service, and such children only.

It is suggested that the true connection of this Parliament Roll, with 25 Ed. III., st. 1, is as follows:—In 17 Ed. III. the question of heritability of children of Englishmen born abroad was twice submitted, as we have seen, to the Houses of Parliament. It was felt that the case of the King's children was too plain to require further consideration. It was agreed (*accordez*), so far as appears, unanimously, that the same rule held at Common Law, and without any occasion for legislation, for children born abroad of those in the King's service. It was not agreed whether this marked the extreme limit at Common Law, and in any case whether further legislation was needed. Cases of persons excluded by the narrower construction were pressing for decision, and in consequence of the great doubt and difficulty attaching to the whole question of the limits of the Common Law Rule, the matter was relegated to the next Parliament. In the event it stood over for eight years. By that time the connection of England with the continent had grown. War and commerce alike had the effect of carrying more of our people abroad, and giving occasion for more births of children to English parents in foreign lands. The Common Law test had become more than ever inapplicable, as a sole test of nationality. Larger views prevailed, and instead of either defining or timidly enlarging its limit, the Parliament decided to abandon the lines of the Common Law altogether in its legislation, and take a new departure. In that new legislation there is not a syllable repealing or limiting, or in fact in any way dealing with the Common Law Rule. The new legislation was wholly concerned with children of English parents on alien soil as such, and dealt with the question in a broad and

liberal spirit, and with such success that no new enactment was passed on the subject for upwards of three centuries and a-half. That a completely new departure was taken is shown by the fact that while the Parliament Roll of 17 Ed. III. by clear implication deals only with the birth of British subjects *within the allegiance*, the key-note of 25 Ed. III., st. 1 is struck in the words "born in the parts beyond the seas, *out of the ligeance of England*." This brings us to the fifth point, wherein lies the very gist of the whole matter.

5. At Common Law, a natural-born subject is one born within the allegiance, an alien one born out of the allegiance. These two classes originally were sharply opposed the one to the other. By successive statutes certain persons have been transposed from the second to the first class. By 25 Ed. III., st. 1, those born of English subjects out of the allegiance were placed in the first class for the purpose of heritability, but not, or not certainly or expressly for all purposes. By 7 Anne, c. 5 (whether by way of further legislation or of interpretation of the earlier statute, it is immaterial here to inquire) these persons are placed in the first class "to all intents, constructions and purposes whatsoever." By 4 Geo. II., c. 21, the Act of Anne is explained and the principle already judicially laid down in *Bacon's case* (Cro. Car. 602) is stated by way of direct legislation to apply, so that it is sufficient if the father alone be a British subject. By 13 Geo. III., c. 21, this is extended one generation farther, so that grandchildren born abroad are made natural-born subjects. Here direct legislation has stopped, but now in *De Geer* v. *Stone*, in the proposition stated in the first paragraph of the head-note, it has been judicially laid down that the *status* conferred by these last three statutes is a merely personal *status*, not transmissible to their descendants by these statutes, nor (it is declared by the second paragraph) by force of Common Law. From 25 Ed. III.

down to the first proposition in *De Geer* v. *Stone*, we have a series of legislative enactments and judicial interpretations wholly concerned with those born out of the allegiance. In the second proposition of the same case we have a judicial interpretation in strict accordance with the Common Law, inasmuch as it merely declares that the Common Law does not touch the case of any persons born out of the allegiance so as to bring them within the first class. But the third proposition deals with certain persons, and pronounces on their *status* at Common Law on the ground of place of birth alone. The proper method, it is submitted, would be to inquire what is the true test at Common Law, whether it be birth in or out of a particular *place*, or birth within or out of the *allegiance*, understanding by "allegiance" something not necessarily coincident with fixed place. And if this latter be the true test, then the question arises whether children born abroad of officers in the military service of the Crown in foreign parts are in fact born within the allegiance.

The question of the true test is concluded by authority, if a unanimous *catena* of the most weighty text-writers (tacitly, if not expressly) assented to by Judges in such a matter, amount to authority. Thus does Coke comment on Littleton (Ins. 129 b): "An alien, which is born out of the ligeance of our soveraigne lord the king . . one borne in a strange country, under the obedience of a strange prince or country (and therefore *Bracton** saith that this exception *propter defectum nationis* should rather be *propter defectum subjectionis*) or as *Littleton* saith (which is the surest) out of the ligeance of the King. Note, here *Littleton* saith not out of the realme, but out of the ligeance, for he may be borne out of the realme of England, yet within the liegeance. And he that is borne within the King's liegeance is called sometimes a denizen, *quasi*

* I cannot find this exact phrase in Bracton. It seems rather to be a corollary drawn by Coke from Bracton's method of dealing with suits brought by an alien.

deins née, borne within, and thereupon in Latine called *indigena*, the King's liegeman; for *ligeus* is ever taken for a naturall borne subject." So in *Calvin's case* (7 Co. Rep., 31) it is said, "Many times ligeançe or obedience *without any place within the King's dominions* may make a subject born." So in *Craw* v. *Ramsay* (Vaugh., 281) it is said that there is "ligeance by birth under the King's power as King of England, in another Prince his Dominions." So in *Anon* (2 Dyer, 224a, 29) in a note it is said that "children of subjects born beyond sea *in the service of the King*" are inheritable, the words in italics showing that their right is independent of 25 Ed. III., st. 1. So in Jenkins' Cent. (I. 3) it is most emphatically declared that "the being born beyond sea *under the allegiance of another King* is the touchstone to try whether alien or not." But nowhere is the question answered in a more practical form than by Littleton himself (Rep. 26, 27): "Nest lieu de nestre, que fait alien de Allegiance." "Sont 3 Incidents al Alien; Primo, Doet ẽe née in partibus transmarinis. 2. South le obedience d'un auter Roy. 3. Que ses Parents sont dehors actual obedience al nostre Roy." It is true these "incidents" are not defined with scientific precision. As to his first, no one can doubt that it is theoretically possible for an alien to be born not *in partibus transmarinis*. For, as is said in *Calvin's case*, "If enemies should come into the King's dominions, and surprise a castle or fort and possess the same by hostility, and have issue there, that issue is no subject to the King, though born within his dominions; because he was not born under the King's allegiance or obedience." A statement, which for the purpose of this paper is important chiefly as it implies the correlative proposition thus expressed in *Craw* v. *Ramsay*: "If the King of England enter with his army hostilely the territories of another Prince, and any be born within the places possessed by the King's army, and *consequently within his protection*, such person is a subject born to the King of

England, if from parents subject and not hostile." Or, as it is put by Molloy (*De Jure Maritimo*, p. 246): "If the King of England enters in a hostile manner the Territories of another Prince or State, and any be born within any of the Places or Guards possessed by the King's Army, they are looked upon in Law to be *within his Protection*, and such Person born is a natural born Subject of England." This is, moreover, explained to be one of the "ways by which men born out of England may inherit in England besides by the Statute of Edward III., *De Natis Ultra Mare*," that is, by Common Law alone. As to Littleton's neglect of the case of alien birth in England, it may well be that the sturdy Englishman did not care to contemplate even the possibility of enemies possessing a castle or fort in this country. Again, as to his third incident, he would hardly have argued that one born abroad of an English mother but foreign father was a subject born. But, after making these allowances, his second incident is unassailable. It expresses that which is the very essence of alienship, birth under the obedience of another sovereign. The Common Law rule is in fact in its origin a feudal rule based on the test of allegiance. The idea is found expressed by the words, ligeance, allegiance, obedience, service, protection. But these various terms are either synonymous, or so closely connected and correlated as to be inseparable. To come to modern times, the true test, and also the condition under which it coincides or not with the physical or geographical test of place, are well stated in the Appendix to the Report of the Naturalization Commission, 1869, p. 5: "By English Common Law none were admissible as natural-born subjects, if they were not born in a place actually possessed at the time of the birth either by the King himself or by some prince doing homage to him for it; except, 1st, the children of any subjects born beyond sea, who at the birth of those children should be in the service

of the Crown." It is strange that the late Chief Justice Cockburn in his treatise on Nationality, while referring to this Report, apparently overlooked this particular passage. Accordingly, after laying down that nationality by Common Law *generally* depends on place of birth, he fails to show how the general rule is limited, and so, it is submitted, misses the *rationale* of the rule itself. His treatise was referred to in both the argument and judgment in *De Geer* v. *Stone*, but the Commissioners' Report on which he professedly based his general statement was not.

To sum up on this point, we have seen that all the statements to be found of the Common Law doctrine (with the exception of those two recent ones here criticised) are consistent and unanimous; that, with these two exceptions, there is absolutely no suggestion, mediæval or modern, to the contrary; that the doctrine asserted by the most venerable text-writers has been adopted by Judges; that legislation, proceeding on totally different lines, has not in one single instance tended towards repealing or cutting short the Common Law rule as to birth within the allegiance.

The second question remains for investigation, viz., whether birth abroad to a father in the military service of the Crown, is birth within the allegiance. When it is once admitted that allegiance is the true test—a point not considered in *De Geer* v. *Stone*—this second question hardly requires discussion, except as it incidentally helps to clear up other difficulties. What is allegiance? Allegiance, derived *à ligando*, "is a true and faithful obedience due from the subject to his sovereign." But here a distinction has to be drawn, corresponding to that between sovereignty *de jure* and *de facto*. Allegiance may be described as *de facto* when the subject is in the *power* of his sovereign, and under his *protection*, so that both can be enforced for the benefit of sovereign or subject. It is *de jure*, without being *de facto*,

when the (theoretical) subject is in some place not under the control of the sovereign. Were birth within allegiance *de jure* sufficient, we should logically arrive at the extreme doctrine condemned in the second proposition enunciated in *De Geer* v. *Stone*. That doctrine would indeed harmonize well with the spirit of feudalism, and accordingly has not been without adherents. But the common sense of Englishmen, lawyers or laymen, has in general rejected it, on the obvious grounds that it was incapable of practical exercise, and tended to embroilment with foreign states. And therefore Littleton speaks of *de facto* allegiance under the name of "*actual* obedience al nostre Roy." But it is clear that a soldier on active service is emphatically both *de jure* and *de facto* within the allegiance. Where a British force, acting as such, is on foreign soil, there constructively but very really are the crown and the law of England. The British soldier, as such, owes no allegiance to the sovereign in whose land he is physically present. Correlatively that sovereign has no power over him. If, then, there is such a thing as birth without the realm, but within the allegiance, as Littleton and Coke assert, and a cloud of witnesses confirm, the typical example would seem to be birth abroad to a parent in the active military service of the crown. The judgment in *De Geer* v. *Stone* denies in unqualified terms that such birth confers the *status* of a natural-born subject at Common Law. Now, a British soldier may be abroad in any one of three different capacities. First, he may be with a British regiment, acting purely as such. Secondly, he may be with a British regiment, lent to an ally. In both cases the individual is acting as a British soldier by virtue of his commission, and (presumably) paid by the British crown, whether or not he is also receiving pay from the ally. He is under the control of the crown, which has the right and power to recall him, with or without his regiment. In one or other of these positions, up to 1697, was the regiment

whose fortunes are detailed in the report of *De Geer* v. *Stone*. Thirdly, the soldier may, by the express or even (conceivably) the tacit license of the crown, serve in a foreign army. Individually, he is still a soldier of the British army, subject to *de jure* allegiance to the British Crown. But it is no longer *de facto*. The Crown may still claim the right to recall or otherwise control him, but can no longer enforce that right by the methods of pure law. The tie between them has passed out of the sphere of Municipal Law into that of International Law; and, as was exemplified in the later history of the "Scotch Brigade," can only be enforced, if at all, by negotiation or treaty between the two states. The birth of a child abroad to a parent situated as in this third case, would not constitute a natural-born subject at Common Law. But in the first and second cases, every consideration of principle and authority points to the conclusion that it would. Whatever may be the rule as to a private ship—and the cases go a long way towards extending to the uttermost jurisdiction over private British ships, even in the tidal waters or ports and rivers of foreign states, except as to acts done to the subjects of such states (see *Reg.* v. *Lesley*, Bell, C.C., 220; *Reg.* v. *Carr*, 10 Q.B.D., 76) —there is no doubt that birth on a British man-of-war, wherever situate, is birth within the allegiance. And how can birth within the lines of a British force, under shadow of the same flag that floats over the ship, be different? Again, marriage solemnized within the lines of a British force, is in all respects equivalent to marriage in Britain. It is true that this matter is subject to a statute (4 Geo. IV., c. 91), but the preamble of the statute and the cases alike show that the statute is merely declaratory of Common Law.

The headnote in the *Law Journal* report already noticed suggests that the fact of the British force being in a friendly or a hostile country might make a difference. It is difficult to suggest any principle on which it should. The only

apparent foundation for such a notion is that some of the authorities already quoted put the case of one prince invading the territories of another "in a hostile manner." It is submitted that these are only particular examples, and do not, as they do not affect to, point to any such limit of the rule. Nor is analogy at least lacking on the other side. "The King's law follows his allegiance out of the local limit of the laws of England" on a friendly as on a hostile soil. Thus we read in Fleta (bk. ii., c. 3) that Edward I., when present in France in a friendly manner, successfully asserted his criminal jurisdiction over his own subject. And as to the *status* of a British army, it was decided in the *Waldegrave Peerage case* (4 Cl. & Fin., 649), on grounds in no wise depending on statute law, that the fact of the force being in an allied country was immaterial to the question of validity of a marriage within the lines. So in *Ruding* v. *Smith* (2 Hag. Const., 371), where the British army was stationed in a country after capitulation, and therefore not formally hostile.

One minor point in *De Geer* v. *Stone* not noticed in the report demands consideration. The actual place of birth of Daniel Mackay the elder was not found as a fact, but there was a doubt whether it was within the lines of the regiment or in the neighbourhood. This, both on principle and authority, should make no difference. That the wife of an officer should retire outside the noise and discomfort of the camp for her confinement ought not to prejudice the birthright of her child. There is an old case not a little to the purpose. In *Joseph Colt's case in Exchequer*, 2 Jac. 1 (quoted in 2 Dyer, 224a, 29), the parents resided at Calais, then an English possession, but shortly before the birth of their child were driven by stress of war to fly to Tournay, outside the King's dominions, where the child was born. The question before the Court being whether the child so born could take lands by purchase, and being rested on the

Common Law irrespective of 25 Edward III., he was decided to be a natural-born subject. Here, as elsewhere, *impotentia excusat legem.* The father was not alleged to be in the King's service. Stronger far is the case where the father is sent or kept abroad by the crown, and thereby placed in circumstances which compel his wife to retire for the time beyond the actual lines of the army.

It is said in the judgment in *De Geer* v. *Stone* (p. 254) that "even if Daniel (A) or Daniel (B) had been in the service of the British crown abroad, I cannot find any authority for saying that this would have given them the *status* of natural-born British subjects by the Common Law." It is not here contended that it would. But it is most emphatically urged that the birth of Daniel (A) to a father being a subject born in England and at the time an officer on active service, conferred on the child the same *status* as birth in England, a *status* which, by the statutes, he could therefore transmit as far as his grandson, the testator, Jan Louis, whose nationality was in question in the action. The judgment appears to confine British nationality by birth abroad to the children of ambassadors. The authorities do not support this view. The original ground of the notion appears to be the circumstance that Coke chose an ambassador's child as an example of birth physically or locally abroad, yet within the allegiance. But Coke nowhere says that this is the only example. The report of *Calvin's case* distinctly implies the existence of other such. The pregnant words, "*Many times* ligeance or obedience, without any place within the King's dominions, may make a subject born," are ill satisfied by the single instance of ambassadors. The instance itself, *pace* the all but infallible Coke, is not well-chosen as a type, depending not on any proper doctrine of English Common Law, but rather on the fiction of ambassadorial extra-territoriality, a doctrine as old as nascent civilization. Is this recent case, almost

unargued on this point, sufficient to upset the test proposed by Littleton and Coke, and referred by the latter to the still earlier authority of Bracton? An alien is such not *propter defectum nationis*, but *propter defectum subjectionis*.

The history of the "Scotch Brigade" is unique and remarkable. The history of the Mackay family, so long oscillating between British and Dutch nationality, ever clinging, at least in its belief, to the former, now restored in the person of its present distinguished representative in the British House of Lords, is no less romantic. The case of Daniel Mackay himself, the testator's grandfather, certainly lies on the border-line. He was born outside the lines of a British regiment, in a friendly country, of a foreign mother. His case marks the very extreme limit of what it is here contended shall be deemed birth within the allegiance. Yet it was within the power and protection of the King of England as such. It is therefore within the border-line, if examined by that test which it has been the object of the foregoing pages both to rescue from the oblivion to which it seemed in danger of being remitted by the turn taken in the recent case here criticised, and to exhibit as the meeting-point of some of the principles that are respectively connected with Feudalism, with the history of Legislation, and with the province of International Law.

W. H. HASTINGS KELKE.

V.—THE PROSECUTION OF OFFENCES ACT, 1879.

ALL readers of the usual "organs of public opinion" must have observed that great dissatisfaction has been manifested, sometimes in rather high places, as to the manner in which the Act mentioned at the head of this article has worked. So loudly, indeed, have opinions been expressed on this subject that questions have been asked in "the House," and it has been assumed with some confidence that changes are imminent. In official quarters it is, perhaps, natural that much of what is open to criticism should have been attributed to the scanty nature of the resources placed at the disposal of the Director of Public Prosecutions; and there is, no doubt, a good deal to be said for this view of the matter. To a great extent the Treasury has power to remedy this; but beyond a certain point even the Treasury cannot go, and it has been boldly, and not without reason, declared, that the machinery provided by the Act is incommensurate with the important functions which it is intended to discharge. Hence it seems likely that, instead of a mere departmental reorganisation, a thorough revision of the system may be *in petto;* and in view of the possible substitution of a new Act for that of 1879, I am anxious to point out an anomalous feature in the present arrangements which reforming hands would, I think, do well to remove.

It is, of course, well known to all who are likely to read these lines that if a private prosecutor once brings a man before a magistrate, and gets him committed for trial, it is not left to his option to go on with the matter thus commenced or to drop it. In some minor proceedings, indeed, a settlement or withdrawal of the case is occasionally

allowed; but, as a rule, the accuser is bound over to prosecute, and the accused is thus unable to escape justice by making terms with him. But how stands the matter under the "Prosecution of Offences Act?" Turning to section 7, we find that "where any criminal proceeding is instituted, undertaken, or carried on by the Director of Public Prosecutions, such Director shall not be bound over to prosecute or conduct such proceeding . . . . and it shall not be necessary to bind over any person to prosecute or conduct such proceeding, and if any person is so bound over . . . . he shall, upon the Director of Public Prosecutions undertaking the case, be released from such obligation, and the security shall be deemed to have been cancelled . . . ." While, then, a man committed in the ordinary way must necessarily (unless the Grand Jury ignore the Bill) stand his trial before twelve of his fellow-countrymen, a person committed under the Act may be set free without trial, if it so please the Director of Public Prosecutions.

Apart from many other inherent weaknesses of the Act, the particular provisions here cited are exceedingly dangerous, and perhaps even unconstitutional. As to the latter point, I should be unwilling, without further examination, to express a positive opinion; though I am strongly impressed with the idea that, constitutionally, a man committed has a right to be tried, and the public has a right to demand his trial. But of the danger of the provisions there can be no doubt, inasmuch as, practically, they enable a public officer to withdraw an alleged criminal from justice, without any legal decision as to his innocence or guilt. Thus, a pardon may be granted, virtually, without a trial, whereas even the Royal Prerogative can only be exercised after the application of that test. Moreover, this pardon proceeds, not from a Secretary of State, placed on a conspicuous eminence, and responsible to Parliament, but from an officer of minor importance, and of no direct respon-

sibility; and it has none of the wholesome surroundings of publicity which accompany the pardon of a man who, though guilty by the verdict of a jury, is innocent in the eyes of the Crown and the country.

Apologists will, of course, answer that there is a provision in the Act which reserves the right of "any person" to institute, undertake, or carry on any criminal proceeding; and another which enables any person having such right to obtain directions as to the mode in which the proceedings shall be continued, even when the Director of Public Prosecutions has taken up the case, provided he can show that the public officer has abandoned the proceedings, or neglected duly to carry on the same.* But every one who is familiar with the early stages of criminal proceedings is aware that nine private prosecutors out of ten, however willing, in their first excitement, to ask for summary justice at the hands of a magistrate, would never, in cool blood and of their own accord, incur the trouble and expense of a trial and face the unknown risks of a possibly unscrupulous cross-examination. When to this natural reluctance is added the disadvantage under which the private accuser would labour after the public officer had thrown cold water on the case by withdrawing from it, it is clear that the obstacles to a private prosecution are very great, and that the Director of Public Prosecutions would be allowed, in the vast majority of cases, to exercise his merciful prerogative in peace. Thus people would come, in time, to look upon this officer as an arbiter rather than as a party or an advocate,† and a new and startling principle would

* I have followed the wording of this provision (*sec.* 6) rather closely, because I have some doubt whether it gives the Court power to order the Director of Public Prosecutions to resume the prosecution, or merely (in accordance with the precise words) to give directions as to the mode, &c.

† Such a feeling might extend even to jurymen, who might say among themselves "the Director of ublic Prosecutions would not have taken up the matter and then dropped it, if he had not felt pretty certain that there was nothing in it."

be introduced into English Criminal Jurisprudence. But a timely alteration of the law may prevent the growth of a personal power of so despotic a character, and it is with the view of suggesting such an alteration that these few lines have been written. As the whole Act will, it may be hoped, be remodelled, it is probable that this subject will receive consideration together with others. Various remedies may be proposed; but the most simple and efficacious would be, I submit, to repeal, in sec. 7, the words, "not be bound . . . security for costs," and to insert, instead of them, the words, *continue such proceeding throughout in like manner as if he were a person bound over to prosecute or conduct such proceeding.* One or two minor alterations in other sections might possibly be required for consistency. As to the Act generally, a learned French critic, reviewing it shortly after its passing, stated that it did not afford even the *minimum* guarantees of efficacy considered essential by those able to judge (M. Babinet, "*Etude*" on the Act, in the *Bulletin de la Société de Législation Comparée* for April, 1880). This prophetic comment has been amply justified by subsequent events; the Bench itself—though not prone to criticize unnecessarily the powers that be—having expressed open dissatisfaction at the mode in which the wide discretionary powers of the Act have, at times, been exercised.

ALMARIC RUMSEY.

VI.—GROTIUS AND THE LAW OF NATIONS.

IT is with great pleasure that we hail any attempt to keep alive among men the memory of those to whom we owe so much as the founders of the modern Law of Nations. Pre-eminent among these stands out the name of Hugo de Groot, better known as Grotius.

But a short while ago, between the publication of our last and that of our present number, the whole kingdom of the Netherlands, we may say the whole world of Letters, was celebrating the Tercentenary of the birth of Grotius at Delft on the 10th of April last.

A National Committee has been formed at The Hague, consisting of some of the most eminent Dutch Jurists and Publicists, and their appeals are before the world, in an interesting article in the current number of the *Revue de Droit International*, (No. 2, for 1883. Brussels: Libr. Muquardt), by M. Wijnmalen, Secretary of the Committee, as well as in the Prospectuses, which we have received from M. Coninck-Liefsting, Vice-President of the High Court of the Netherlands, which now lie before us.

The claims of Grotius to a place in the first rank of the thinkers of his day, and indeed of many a subsequent day, scarcely need to be repeated here. They have some time since been advanced in the pages of this *Review* by no less a pen than that of Sir Travers Twiss, in his discussion of the Treatise *De Jure Prædæ*, published in the Netherlands. Another learned countryman of ours, the illustrious Master of Trinity College, Cambridge, Dr. Whewell, stands godfather, so to speak, in this country, for the much more widely known *De Jure Belli et Pacis*. It seems curious that M. Wijnmalen should not appear to be aware of either of these English monuments to the memory of Grotius.

It is very true to say of Grotius, as the Dutch Committee say in their Prospectus, that nothing escaped him. He had his predecessors, undoubtedly, and their value has been justly set forth by M. Nys in his *Droit de la Guerre et les Précurseurs de Grotius*, and by Count Saffi in his *Alberigo Gentili*, both of whose works have been noticed in this *Review*.

But these forerunners of Grotius no more take away from the actual merit of Grotius himself than the so-called Reformers before the Reformation take away from the merit, whatever it may be, of the Reformers of the Sixteenth Century.

What both the Thirteenth and the Fifteenth Centuries, more or less consciously demanded, what the Fifteenth Century, in fact, unquestionably tried to accomplish, it was left to the Sixteenth Century to effect, though in a shape far different in many respects from that which would have commended itself to either of the previous periods.

The development of the Reform of the Church was slow. No less slow was that of the formation of the modern Law of Nations. There are yet other similarities between the two. Both are still, in a certain sense, incomplete. The last seal has been set to neither.

The Fifteenth Century cried aloud for the Reform of the Church in Head and members. Now by Head was meant the Pope. But after the solemn proclamation of the doctrine that the Church was above the Pope,—after the solemn deposition of Pope and anti-Pope—all that the Fifteenth Century Councils succeeded in doing was to restore John XXIII. to the Cardinalate, to burn Hüss, and to end in a Sixteenth Century Council, viz., the Council of Trent, which has not succeded to this day in getting its Canons received in some of the leading countries of Western Europe, themselves in communion with Rome.

So it is with the Law of Nations—Gentili, De Victoria, Ayala, Grotius, Zouche, and many another in different Theological and Juridical camps, have laboured to build up a perfect *Jus inter Gentes*. They have done what in them lay. They have laboured not by any means altogether in vain. There is a fair retrospect possible in the work of the Doctors of the Law of past generations. There is good hope for the success of the workers of the present and future.

The ameliorating effects of Societies like the Institute of International Law, and the Association for the Reform and Codification of the Law of Nations may plead Grotius as their exemplar, may cite him for their supporter, may hope to aid in making his humane views prevail in a perhaps not very distant future. It is doubtless possible, that if Grotius had been more of a partisan, his views would have found more ready acceptance to a certain extent. But he was not a party man, as is well shown in the extracts which M. Wijnmalen gives from M. Groen van Prinsterer's book —*Maurice et Barneveldt*. He sided, in fact, neither with Luther nor with Calvin. His school was rather that of Erasmus.

We cannot wish that Grotius had been more of a partisan. He occupies a far more truly great, and a far more really International position, from the fact that he is so much above and outside of party considerations. He thus belongs the more truly to the world at large. He is thus the more really a citizen of the World-State, of which all the various countries which unite in honouring him, are themselves, as it were, but streets and houses.

We trust that a work so International in its interest as the monument to Grotius, will draw to it the sympathy and co-operation of the world for which he laboured. So will the monument the more emphatically perpetuate the memory of one whose name should be kept green through all ages.

SELECT CASES: COLONIAL.

SUPREME COURT OF FIJI, IN CIVIL JURISDICTION, OCTOBER 25, 1882. *Everett* v. *The Crown.*

Interlocutory Judgment of Hon. Sir John Gorrie, C.J.

In this case there was a hearing on the 15th June last, when, after the evidence of the Colonial Secretary and others had been taken, and hearing counsel, I came to the conclusion that the cause was not ripe for final judgment—that several important questions were opened up which had not been sufficiently dealt with either on the pleadings or arguments; and, above all, I came to the conclusion that the decision in the cause might seriously affect the rights of parties not then before the Court, viz., the native owners of the land which the plaintiff claimed as his, and without whose appearance the judgment, if for the plaintiff, might not end the contention. The nature of the case may be shortly stated thus: The plaintiff alleges that a Crown grant which, after registration in certain circumstances is indefeasible, had been signed by the Governor, and registered, and had thus conferred upon him an indefeasible title to the 546 acres of land contained in the grant, and that it had been improperly kept back from him by the officers of Government. The defence of the Government is, that the Crown grant had been signed and registered in error, and that, not having been issued, it had not become indefeasible, although registered, and they offered the plaintiff another Crown grant for 139 acres. which they allege is all he is entitled to, or that was intended to be granted to him. The evidence taken at the preliminary hearing in June—and, indeed, the course of proceedings in regard to these claims to land upon which Crown grants follow—brought the fact into prominence that a cause had depended in the Tribunal for rehearing claims to land between the native owners and the plaintiff, or the Curator of Intestate Estates, who then represented Stewart's heirs. The plaintiff necessarily takes up the position that this cause has ended, and that the result of it was that the estate he represents was to receive a Crown grant for the 546 acres as registered. The position of the Crown in contending that the first Crown grant was signed in error, and offering another for a less number

of acres, shows (whatever plea may now be put on record) that it would be very difficult for the Crown to sustain any other proposition, also than that the cause had ended in the Court for rehearing, and that in offering the second Crown grant they were carrying out the decision of that Tribunal. But the native owners, if properly represented, might contend—and, for aught I know, might successfully contend—in a manner entirely unhampered by the difficulties of the position already taken up by the Crown, that the cause had not been concluded in the Court for rehearing, and that both Crown grants, whether registered or not, had been prematurely signed while the cause was *sub judice*, and that this Court, pending the ultimate decision of the case in the Tribunal appointed for the purpose, could not entertain the questions as raised by the plaintiff. This is a question which is in the cause, which must be considered by me, and which I desire to have argued by a counsel representing the native owners, as well as to hear the arguments in regard to it by the counsel for the plaintiff and the counsel for the Crown respectively. Then, again, the question as to the indefeasibility of the title consequent on registration is a most important one for this colony. Our system of land rights is based on registration, that is, that the act of registration, and not the document registered, carries the title. This is the general doctrine on which the plaintiff takes his stand, whether it is applicable in his particular case or not. Now, it is evident that this question might be a very different one if it lay simply between the plaintiff and the Crown as the grantor of unclaimed and empty lands, and the plaintiff and native owners actually in the ownership and possession of the very lands said to be granted. In the one case, if the plaintiff succeeded, the loss would only be a trifling monetary loss to the Crown, consequent on the error of its officers; in the other, as the law of this colony, differing in this respect from that of some colonies, most properly and justly recognises the native title to land and obliges Courts of Justice to take it into account as derived from immemorial native custom, the question might assume the phase of a competition between the two titles, both recognised in law, both good in their own sphere, and requiring most careful consideration whether the action of the Crown, by mistake as alleged, was such, and the state of the law required, the one title to give way to the other, leaving, or not leaving, a mere question of pecuniary compensation behind. In order to judge of this, it would be

necessary that the native title should be set forth in the pleadings; and if it be, as I understood the Attorney-General to state, on the hearing of this motion, that the natives were not owners by immemorial descent, but simply occupants by right of war, the facts ought all the more to be before the Court on the pleadings for the natives or the rejoinders of the parties. In these circumstances, seeing questions of great moment and difficulty before me, I directed the native owners, as these might be certified by the Chief Native Commissioner to be called for their interest, and to be represented by counsel on their behalf, in order that in the determination of the suit I might hear what some skilled person could say from their point of view, and in order that whatever judgment was given would be final. Of course I might have taken another view. I might have said to myself, "There is a Native Department of the Government, formed and paid for the purpose of looking after the interests of the natives, and if they, knowing as they ought to do of this case, and the important native interest involved in it, do not choose to be watchful, why should I take any trouble about the matter? If the judgment goes for the plaintiff, when he proceeds to enforce it and to turn the native owners off the land, and some complication arises, the Native Department may then become alive to the question, and endeavour to open it up anew by the plea that, the decision having been *res inter alios acta*, the native owners were not bound by the decision." This is not the spirit, however, in which I have thought it right to discharge judicial duty to litigants coming before this Court. This is not the spirit, above all, in which I should ever deem it right to discharge judicial duty in a young country where such questions as those of disputes about land might at any moment lead to serious consequences. This is not the spirit in which I should ever deem it right to discharge judicial duty in a country where the Queen, by her officers and her laws, has shown the utmost solicitude that the rights of the ancient inhabitants of the land shall, equally with those of her British subjects, be cared for and protected. To save all further questions—to inform my mind fully of all that could enter into the consideration of the important issues raised—I directed that all having interests should be brought before the Court, and that those unskilled in European ways, in the procedure of Courts, and in the language in which law-suits are conducted, should be represented by some counsel learned in the law. No appeal

was taken from this order, as, indeed, it would have been very strange if there had, since it is the invariable custom in the Tribunal for rehearing claims to land where the Governor presides. The Chief Native Commissioner duly certified that the Kai Waivunigele were the native owners of the lands in question. The plaintiff, after some additional evidence had been taken by commission, moved that the cause be again set down for hearing, mentioning that the Attorney-General, who was counsel for the Crown, had also put in a statement for the native owners. This did not appear to me to be the proper mode or a satisfactory mode of implementing the order of the Court; and, on looking at the papers in Chambers, I was convinced that the *pro forma* statement for the native owners put in by the Attorney-General on their behalf, simply accepting of the pleading put in by the Crown, would not bring out the case of the native owners, or lead to a satisfactory final judgment. I felt that they ought to be separately represented, and that a counsel appearing for them alone could much more effectually plead their cause, and contend that they ought not to be injuriously affected by the blunders of the Crown officers, than the counsel who represented the officials or the Government which had made the blunders. The cases requiring to be argued appeared to me to be so separate and distinct that the interests of the native owners would have run a great risk of being sacrificed to the exigencies of the contention which the counsel for the Crown must primarily and chiefly uphold, and that, failing to hear the real arguments which could be advanced by them, I should in like manner lose the benefit of the reply of the plaintiff's counsel in supporting his plea that the registration carried the title absolutely against all comers. In the most considerate way, therefore, for all parties, I attempted to get my original order carried out in its true intent and spirit, and informed the acting head of the Native Department, who may be regarded as the official guardian o the natives, of my desire. I thought I had succeeded, and in order to put the proceedings of the cause into shape, issued an order in Chambers allowing the *pro forma* statement for the native owners to be withdrawn, and another substantive pleading to be put in its place, after which the cause would be heard. In place, however, of taking advantage of the permission I had given, I now find, from a communication made by the acting head of the Native Department to the Registrar of the Court, and from the contention of the Attorney-General at the bar,

when the plaintiff's motion to have the cause set down was heard, that my order is resisted by Executive authority, both, as I now understand it (however contradictory the position may appear), the order contained in the interlocutory judgment of 15th June last, and the permission to retire the *pro forma* statement for the native owners of the 4th instant. It is something new—or, at all events, it is happily rare— that the Executive should attempt in any manner to interfere with or overrule the procedure of Courts of Justice. That which has made the Courts of England so trusted of the people is that they are known to be absolutely free from Executive influence, intermeddling, or dictation, in particular causes, either as to the course of procedure or the decisions of the Judges. If such freedom from Executive control is necessary in a country where the Parliament is so frequently in session to redress wrongs, and public opinion is so minutely informed of passing events and so quick to act, how much more necessary is it that the Courts of Justice in such communities as these should be free and unfettered, where the form of Government is arbitrary, and where the fortunes of the citizens may be seriously influenced for better or for worse by the hasty stroke of an official pen? In this case, moreover, where a necessary order of the Court is resisted, the Crown is one of the litigants, and refuses to do what lies in its power in order that the Court may be fully informed of the facts and circumstances, and supplied with the arguments which may lead to a right decision. Only once before has any attempt been made to question the authority of this Court during that tenure of office which is now drawing to a close. It was on the occasion of the first native suit being brought, but it only took the shape of a little display of irritation at the result. That, perhaps, might have been looked for at any early period of the history of the colony, but it could scarcely be anticipated that this Court should now encounter resistance from those who, above all others, ought to sustain it in the exercise of its functions; that the power of the Court to do the plainest duty which lies upon Judges—that of protecting the interests of those who, from circumstances, are incapable of protecting themselves, and insuring that the litigation in progress should be so shaped as to lead to a final settlement of the questions at issue—should be openly challenged by the counsel for the Crown, and that the heads of the Native Department should be forced into the position of

refusing their assistance to have the interests of the native owners properly and efficiently brought before the Court for consideration and determination. Whatever others may consider to be their duty, mine appears to me to be clear. If I were to permit the judgments and orders of this Court to be defied and resisted, I should undo the work of years, betray the trust that has been confided to me, and transmit to my successor a heritage of difficulty and humiliation. I prefer rather to leave this Court as I found it, with its just authority undiminished, and the reputation of its Judges (which I hope they possess) for independence in the discharge of their duties untarnished. I shall indeed now be obliged to alter the permission given to retire the *pro forma* statement for the native owners, and direct the Registrar of the Court to put it out of the cause, as not being in fulfilment of the order. The plaintiff's counsel has suggested that, in the circumstances, I should myself appoint a counsel for the native owners; but it is clear that when the Colonial Government has organised a special department for the purpose of guarding native interests, it possesses the only available machinery for enabling the order I have already given to be carried into effect. The native owners are a community, and not individuals possessing individual rights; and the head of the community is either an officer of, or in close correspondence with, the Native Department, which, as it also advises in the money concerns of the communities, can arrange for the advance of the necessary preliminary costs, which may or may not hereafter be costs in the cause. Moreover, I cannot but feel that it would be *pessimi exempli* to permit the puerile reasons set forth in the Acting Native Commissioner's letter or memorandum to have any weight with the Court. I must accordingly repeat the order to have the native owners represented in the cause for their interest, as the Crown invariably and properly insists on in the Tribunal devoted to the rehearing of land claims, and, because of the peculiar nature of the cause, by a counsel different from the counsel for the Crown, and who shall put in such pleading as he may deem best calculated to bring such interest fully and fairly before the Court; and this order I direct to be fulfilled by the Colonial Government, the defendant in the cause. I do not overlook the position of the plaintiff, the hearing of whose suit is thus delayed from no fault of his. I had occasion, in June, to say what I thought was necessary in regard to certain hard-

ships alleged by him from delays which were in no way attributable to the Court; but any delay which has now arisen, and which may continue, lies solely at the door of the defendant. I will, therefore, allow the plaintiff costs at the rate of one guinea per diem from the date of the letter or memorandum of the acting head of the Native Department to the Registrar, to which I have referred, until the order of the Court has been obeyed, with leave to move for a higher allowance should the resistance be prolonged.

[From Report in *The Crown and the Land Claimants.* Levuka, Fiji, 1882.]

Legal Obituary of the Quarter.

(ENGLAND, SCOTLAND, AND IRELAND.)

AMOS, George, Esq., Solicitor, Wye, Kent. Admitted in 1833. *Feb.* 22.

ARNEY, Sir George Alfred, Kt., M.A., late Chief Justice of New Zealand, aged 73. Sir George, who was youngest son of William Arney, Esq., of Salisbury, proceeded from Winchester College to Brazenose College, Oxford, where he appears, by the *Oxford Ten-Year Book*, to have taken his B.A. degree, 3rd Class in *Lit. Hum.*, in 1831. Sir George Arney was called to the Bar of the Hon. Society of Lincoln's Inn in 1837, according to the *Law List* and *Inns of Court Calendar*, and became a member of the Western Circuit. He was appointed to the Bench in New Zealand in 1858, Chief Justice and knighted in 1862, and resigned in 1875. *April* 7.

BANKES, Henry Hyde Nugent, M.A., D.L., of Studland, Dorset, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 54. Mr. Bankes, who was of Trinity Hall, Cambridge, to which he proceeded from Eton, graduated as B.A., 1850, and M.A., 1853. He was called in 1854, and became a member of the Western Circuit. His father, Right Hon. George Bankes, of Corfe Castle, was for some time M.P. for Dorsetshire, for which he was himself a Deputy-Lieutenant. *March* 26.

BRADLEY, William, Esq., Solicitor, Surbiton, aged 28. Mr. Bradley, who was only son of William Bradley, Esq., of Wimbledon, also a Solicitor, was admitted in 1876. *April* 21.

CAMPBELL, Neil Colquhoun, of Barnhill, Esq., Advocate at the Scottish Bar, Sheriff of Ayrshire, aged 69. Mr. Campbell, whose father was Sheriff-Substitute for Renfrewshire at Paisley, was called by the Faculty of Advocates in 1842, and in 1862 was appointed by the Lord Advocate Moncrieff, to the Sheriffship of Ayrshire. *April* 3.

CHANDLESS, Thomas, Esq., Q.C., Senior Bencher of Gray's Inn, aged 84. Mr. Chandless, who was called to the Bar by the Hon. Society of Gray's Inn in 1822, became one of Her Majesty's Counsel in 1851, having been elected a Master of the Bench of his Inn in 1847, and served the office of Treasurer in 1850. *Feb.* 23.

CLARKE, William, Esq., Solicitor, formerly of Longton, Staffordshire, aged 91. Admitted as far back as 1810, Mr. Clarke is stated to have been one of the oldest surviving members of his branch of the profession in England. *Feb.* 10.

CRAWFORD, Alfred Edward, of Trinity College, Dublin, and of the King's Inns, Esq., Student-at-Law, aged 22. Mr. Crawford, who was a native of Coleraine, was shortly to have taken his degree, and thereafter to be called to the Irish Bar, had won a very distinguished position at the University, where he obtained in October, 1882, the Gold Medal for Oratory, and the Silver Medal given for English Composition by the Historical Society of Trinity College, for which last distinction, it is stated by the *Belfast Evening Telegraph* (cited by the *Irish Law Times*) that he was the youngest competitor of the present century. Among his predecessors as Silver Medallists may be mentioned Plunket and Lecky. He also held the office of Honorary Librarian to the Historical Society. *April* 13.

DEBENHAM, George, Esq., Solicitor, St. Albans and London, aged 76. Admitted in 1829. *Feb.* 14.

DE SKELTON, John Dodson, LL.B., of Woodland Hall, Lancashire, and of the Inner Temple, Esq., Barrister-at-Law, aged 70. Mr. De Skelton, who was called to the Bar in 1844, was eldest son of Capt. Skelton, of Rockcliffe, Cumberland, and the 55th Foot. He proceeded from Shrewsbury School to Trinity College, Cambridge, where he graduated as LL.B. in 1841. After some years of home practice at the Equity Bar, Mr. De Skelton went out to Australia, and practised at Adelaide. He was J.P. for Cumberland. *March* 30.

DIXON, Joseph Anthony, Esq., F.R.S.E., Member of the Faculty of Procurators, Glasgow, aged 50. Mr. Dixon, who was

admitted in 1860, was for a time Professor of Commercial Law in the Andersonian University, Glasgow, and his opinion was much sought after on questions of Patent Law, on account of his extensive acquaintance with Chemical Science. He was a man of wide culture, being at the same time, we learn from the *Scottish Law Magazine*, an excellent botanist, and an admirable amateur artist, while few professional men had a better knowledge of English and Scottish, as well as of Foreign Literature. Mr. Dixon assisted Lord McLaren in preparing the seventh edition of Bell's Commentaries on the Law of Scotland. (*Ante* 19) *Oct.*

DUKE, Robert Esq., Solicitor, Birmingham, aged 62. Admitted in 1858. *Feb.*

DUMVILLE, John, Esq., Solicitor (Irel.), of Ballynestar Lodge, Co. Wexford, aged 71. *March* 11.

EARLE, Nicholas, Esq., Solicitor, Manchester, aged 81. Admitted in 1830. *Feb.* 19.

EASTON, Josiah, Esq., Solicitor, Taunton, aged 38. Admitted in 1868. *March* 23.

EDWARDS, Henry, Esq., Solicitor (Irel.), aged 76. Admitted in 1835. *Feb.* 21.

FABER, Henry Grey, Esq,, Solicitor, Town Clerk of Stockton-on-Tees, aged 53. Mr. Grey, whose father had also held the same office at Stockton, was admitted in 1854, and appointed in 1858. *Feb.* 3.

FARRAR, Frederick, Esq., Solicitor, aged 78. Mr. Farrar, who was admitted in 1827, had been a member of the Corporation of the City of London since 1840, and was its representative at the Thames Conservancy Board. *Feb.* 23.

FORTESCUE, Matthew, of Weston House, Totnes, and of the Middle Temple, Esq., Barrister-at-Law, Judge of County Courts for Devonshire, aged 77. Mr. Fortescue, who was called to the Bar in 1839, was appointed to his Judgeship in 1857. *March* 27.

FURLEY, Charles John, Esq., Solicitor, Ashford, Kent, aged 34. Admitted in 1870. *Feb.* 6.

GLOAG, John Austin Lake, Esq., writer, Edinburgh, aged 63. Mr. Gloag, who was of the University of Edinburgh, was admitted to the Legal Profession, but was best known in the literary world as an author of considerable merit. *Jan.* 10.

GORDON, Robert Francis, D.L., J.P., of Florida, Co. Down, and of the King's Inns, Esq., Barrister-at-Law, aged 80. Mr.

Gordon, who was of Trinity College, Dublin, took his degree as B.A., 1823, but does not appear to have taken his M.A. He was called to the Irish Bar, and he was D.L. for Co. Down, and J.P. for Antrim, and had served the office of High Sheriff for Cos. Down and Tyrone. The branch of the ducal house of Gordon represented by the late Mr. Gordon of Florida, were early immigrants from Scotland, coming from Berwickshire during the Civil War, and settling in Co. Down, where they have ever since remained. Their first Irish home was at Ballintagart, near Rosstrevor; their present chief seat was acquired in 1755 by the marriage of Robert Gordon with Alicia, only daughter of James Arbuckle, and heiress of her mother, Anne, daughter and heiress-at-law of David Crawford of Florida, himself also a member of one of the many Ulster families of old Scottish descent. *Jan.* 7.

GOWAN, William, Esq., Advocate at the Scottish Bar, and of the Middle Temple, Barrister-at-Law. Mr. Gowan was called by the Faculty of Advocates in 1831, and by the Hon. Society of the Middle Temple in 1842. *Feb.* 6.

GREEN, Frank Henry, Esq., Solicitor, aged 44. Mr. Green, who was admitted in 1860, formerly practised in Bombay. *Feb.* 4.

GUNNER, Thomas,, M.A., of Lincoln's Inn, Esq., Recorder of Southampton, aged 67. Mr. Gunner, who was son of the late William Gunner, Esq., of Bishop's Waltham, Hants, was of Trinity College, Oxford, where he went up from Winchester, taking his B.A. degree in 1838, and his M.A. in 1840. In 1842 he was called to the Bar, and became a Member of the Western Circuit. Receiving his appointment to the Recordership of Southampton in 1870, Mr. Gunner was J.P. for Hampshire and the City of Winchester. *March* 3.

HALL, Richard, of Innismore Hall, Co. Fermanagh, and of the King's Inns, Esq., Barrister-at-Law, aged 76. Mr. Hall, who was a member of Trinity College, Dublin, and was called to the Irish Bar in 1829, was J.P. for Co. Fermanagh (High Sheriff in 1842). He was the eldest son of Robert Hall, Esq., of Merton Hall, Co. Tipperary. *March* 6.

HALL, William Champion, Esq., Solicitor, aged 59. Admitted in 1852. *Jan.* 31.

HARRISON, William George, Esq., M.A., Q.C., and a Bencher of the Inner Temple, aged 56. Mr. Harrison, who was of St. John's College, Cambridge (B.A., 18th Wrangler, 1850),

was called to the Bar by the Hon. Society of the Inner Temple in 1853, took silk in 1877, and was elected a Master of the Bench of his Inn in the same year. *March* 5.

HASWELL, Edmund Henry, Esq., Solicitor, Sunderland, aged 38. Mr. Haswell, whose father was a member of the Corporation of Sunderland, was admitted in 1864, and was himself a member of the Town Council of Sunderland. *Jan.* 21.

HAY, James Gordon, of Seaton, Aberdeenshire, and of the Inner Temple, Esq,, Barrister-at-Law, aged 67. Mr. Hay, who was J.P. for Aberdeenshire, was called to the English Bar in 1840, and was eldest son of General Lord James Hay, second son of George, 7th Marquis of Tweeddale, by Elizabeth, daughter and heiress of James Forbes, Esq., of Seaton. *Feb.* 8.

HEELAS, Wilberforce, Esq., Solicitor, Stroud, Gloucesterhire, aged 47. Admitted in 1855. *Feb.* 16.

HEMINGS, William, of the Middle Temple, Esq., Barrister-at-Law, aged 68. Called in 1851. *Feb.* 21.

HERRIES, Sir Charles John, K.C.B., M.A., of St. Julian's, Sevenoaks, and of the Inner Temple, Barrister-at-Law, formerly Chairman of the Board of Inland Revenue, aged 67. Sir Charles, who was eldest son of the late Right Hon. John Charles Herries, sometime Chancellor of the Exchequer, was of Trinity College, Cambridge, to which he went up from Eton, and where he graduated (2nd Cl. Classics) in 1837, and subsequently took his M.A. He was called to the Bar in 1840, and was for some years a Commissioner of Excise. He was Chairman of the Inland Revenue Board, 1877-80, and was created C.B., 1871, K.C.B., 1880. *March* 14.

HOPE, Sir Archibald, of Craighall, Bart., and of Pinkie, Advocate at the Scottish Bar, aged 74. Sir Archibald, who was called to the Scottish Bar in 1829, was D.L. for Midlothian, and J.P. for Fife, and Major-General of the Royal Company of Archers. He succeeded his father, Sir John Hope, as twelfth Baronet (created 1628) in 1853. The first Baronet was Lord High Commissioner to the Church of Scotland in 1643, and Lord Advocate *t.* Car. I. The second Baronet was a Lord of Session, by the title of Lord Craighall, and was President of the Commissioners for Administration of Justice under the Protectorate. *Jan.* 24.

HUGGINS, Hastings C., LL.D., of the Inner Temple, Esq., Barrister-at-Law, Q.C. (Nevis), Stipendiary Magistrate, British Guiana. Mr. Huggins, who was called to the English Bar

in 1858, was, according to the *Colonial Office List*, Queen's Counsel, Solicitor-General, Speaker of the House of Assembly, and Member of the Executive Council of Nevis, and completed a revision of the Laws of the Island, 1681-1861. In 1861, he became Attorney-General and *Ex-officio* Member of the Executive Council of British Honduras. *March* 27.

HUNT, Holdsworth, Esq., a Bencher of the Inner Temple, aged 76. Mr. Hunt, who was called to the Bar in 1833, was elected a Master of the Bench of his Inn in 1865. *April* 26.

JAMESON, Charles Nicholas, Esq., Solicitor (Irel.), Egremont, Co. Dublin, aged 35. Admitted in 1869. *Feb.* 24.

JERVIS, Jervis John, of Lincoln's Inn, Esq., Barrister at Law, aged 80. Mr. Jervis, who was called in 1830, was second son of the late Swynfen Jervis, Esq., who succeeded in 1802 his cousin, John Jervis, Esq., in the estate of Darlaston, both being descended from John Jervis, Esq., High Sheriff of Staffordshire, 7 Anne, the common ancestor also of Viscount St. Vincent, and of the late Sir John Jervis, L.C.J. *Jan.* 30.

JESSEL, Right Hon. Sir George, Kt., M.A., Master of the Rolls, and a Bencher of Lincoln's Inn, aged 59. Sir George, who was son of Zadok Jessel, Esq., of Putney, was a graduate of the University of London, of which he died Vice Chancellor. He took his B.A. degree, as Flaherty University Scholar in Mathematics and Natural Philosophy, 1843; M.A., 1844, and in 1846 was elected a Fellow of University College, London, in Arts and Laws. He was called to the Bar of the Hon. Society of Lincoln's Inn in 1847, and became a Master of the Bench of that Society in 1866, having taken silk in 1865. Sir George was returned as M.P. (Liberal) for Dover in 1868, and sat till 1873. In 1871 he was Solicitor-General, and was knighted in 1872. In 1873 he was appointed Master of the Rolls, and sworn of the Privy Council. The historically remarkable circumstance that the late Master of the Rolls should have been a member of the Hebrew persuasion, has not escaped the notice of some of our foreign contemporaries, the *Juristische Blätter*, of Vienna, drawing special attention to the fact. *March* 21.

JONES, John, Esq., Solicitor, Registrar of the County Court, Swansea, aged 56. Admitted in 1849. *March* 5.

KANE, Daniel Ryan, Esq., M.A., Q.C. (Irel.), late Recorder of Cork. Mr. Kane, who was a member of Trinity College, Dublin (B.A. and M.A., 1832), was called to the Irish Bar in 1825, and took silk in 1847. *Jan.* 17.

KEYS, Robert, Esq., of Fort Lodge, Enniskillen, County Fermanagh, Solicitor (Irel.), aged 82. Mr. Keys was admitted in 1836. *Jan.* 11.

LAYTON, John, Esq., Solicitor, aged 70. Admitted in 1847. Mr. Layton had been Clerk and Solicitor to the Vestry of Islington since 1856. *March* 4.

LEWIS, Richard, of the Inner Temple, Esq., Barrister-at-Law, aged 61. Mr. Lewis, who died at Cannes, was a member of the Western Circuit, and was called in 1862. He was well-known for his long and zealous service as Secretary of the Royal National Life Boat Institution, a post which he had held for more than thirty years. *March* 17.

LOWRY, John Fetherstonhaugh, of Limaville and Doraville, Co. Tyrone, and of Ballymore, Co. Westmeath, and of the King's Inns, Esq., Barrister-at-Law, aged 63. Mr. Lowry, who was of Brazenose College, Oxford (B.A., 1840), having proceeded thither from Rugby School, was called to the Irish Bar in 1843. He was J.P. for Cos. Tyrone and Westmeath, and was second son of the late Robert William Lowry, Esq., D.L., of Pomeroy House, Co. Tyrone. *Feb.* 5.

LYNCH, William Nicholas, of the Middle Temple, Esq., Barrister-at-Law, aged 52. Mr. Lynch, who was son of the late Hon. William Lynch, of St. Vincent's, West Indies, was practising at Georgetown, Demerara, at the time of his death. *March* 8.

MACDONALD, William ROBERTSON, of Kinlochmoidart, Esq., Advocate at the Scottish Bar, aged 81. Mr. Robertson Macdonald, who was called by the Faculty of Advocates in 1824, and was D.L. and J.P. for Inverness-shire, was eldest son of Lieut.-Col. David Robertson, by Margaretta, daughter of Lieut.-Col. Alexander Macdonald, of Kinlochmoidart, and sister and heiress of Lieut.-Col. Donald Macdonald, Governor of Tobago. Mr. Robertson Macdonald re-assumed the name of Macdonald in 1876, as heir of line of the Kinlochmoidart family. He was descended through his father, Principal Robertson, Historiographer Royal for Scotland, from the Robertsons of Muirton and Gladney, who were stated to be cadets of Struan. *Feb.* 22.

MACNAMARA, Charles Carroll, B.A., of the Middle Temple, Esq., Barrister-at-Law, aged 25. Mr. Macnamara, who was called to the Bar in 1881, was of Oriel College, Oxford, B.A., 1879, 2nd Class in Examination for B.C.L., 1880. *April* 19.

MANSEL, Sir John Bell William, of Muddlescombe, Carmarthenshire, and Wrotham Heath House, Kent., Bart., and of Lincoln's Inn, Barrister-at-Law, aged 77. Sir John, who was called to the Bar in 1831, was second and only surviving son of Sir William Mansel, 8th Bart. (cr. 1622), whose ancestor, Sir Francis, was grandson of Sir Rice Mansel, of Margam, Chamberlain of Chester, *t.* Henry VIII, and was descended from the Chancellor of Henry III. Sir John served as High Sheriff of Carmarthenshire in 1846, and was D.L. for that county. *April* 14.

McCONCHY, Andrew, of the King's Inns, Esq., Barrister-at-Law, LL.B. Called to the Irish Bar in 1861. *Feb.* 7.

McCOY, William James, Esq., Solicitor (Irel), aged 57. Admitted in 1869. *March* 3.

McLEOD, Joseph Addison, Esq., Q.C., of the Inner Temple, aged 43. Mr. McLeod, who was called to the Bar in 1863, and was a member of the South-Eastern Circuit, took silk in 1882. *April* 14.

MONRO, George, Esq., Advocate at the Scottish Bar, Sheriff of Linlithgow, Clackmannan, and Kinross, and Commissioner in Lunacy, &c., for Scotland, aged 77. Mr. Monro, who was son of Charles Monro, Esq., of Berryhill, was called by the Faculty of Advocates in 1827, and was appointed to the Sheriffship and Commissionership in Lunacy in 1866. Mr. Monro, who was standing Counsel to the Royal Scottish Academy, was critic, author, and editor, as well as lawyer, and had made his mark in each of these branches of learning. In 1867 he drafted the Public Health (Scotland) Act, which is described by the *Edinburgh Courant* as "the most successful in revolutionising the sanitary condition of the people that has ever been attempted in Scotland;" and he also published a Manual of the Act. He edited with ability Lord Mackenzie's valuable work on *Roman Law*, the last edition of which, by Mr. Kirkpatrick, has been noticed in this *Review*. *Jan.* 12.

MORRELL, Frederick Joseph, Esq., Solicitor to the University of Oxford, aged 71. Mr. Morrell, whose father, Baker Morrell, Esq., was also Solicitor to the University, and whose mother was daughter of the Rev. Dr. Chapman, President of Trinity College and Vice-Chancellor, was admitted in 1832. He was appointed Solicitor to the University in 1854. *Jan.* 13.

MORRIS, Charles, Esq., Solicitor, Leicester, aged 69. Admitted in 1037. *March* 27.

MORSE, Charles, M.A., of the Inner Temple, Esq., Barrister-at-Law, aged 62. Mr. Morse, who was of the University of Edinburgh, and of Trinity College, Cambridge, graduated at Cambridge as B.A., Jun. Opt., 1844, and subsequently took his M.A. He was eldest son of George Morse, Esq., of Catton Park, Norfolk, for which county he was himself D.L. and J.P. *March* 25.

MOTE, Richard Crofts, Esq., Solicitor, aged 38. Admitted in 1866. *Feb.* 8.

PEELE, Edward, Esq., J.P., Notary Public, aged 70. Mr. Peele, who was admitted a Notary in 1858, was in that year appointed Registrar and Chapter Clerk, Durham, which post he held till 1870. He was in the Commission of the Peace for Durham, and was Mayor in 1877. *April* 14.

PLUNKETT, James Joseph, Esq., Solicitor (Irel.), of Dublin. Son of James Plunkett, Esq., also a Solicitor in Dublin. Admitted in 1874. *April* 14.

READE, Philip, M.A., of The Wood Parks, Mountshannon, Co. Galway, and of the King's Inns, Esq., Barrister-at-Law, aged 89. Mr. Reade, who was of Trinity College, Dublin, B.A. 1811, M.A. 1816, was called to the Irish Bar in 1816. He was eldest son of William Francis Reade, Esq., of the Wood Parks, and was J.P. for Galway and Clare. *March* 9.

REID, Richard Tuthill, LL.D., of the King's Inns, Esq., Barrister-at-Law, Professor in the University, Bombay. Dr. Reid, who died at Rome, was called to the Irish Bar in 1853. *Feb.* 11.

RICHARDS, John, Esq., Solicitor, formerly of Birmingham, aged 77. Admitted in 1826. *Jan.* 28.

ROSE, Sir Philip, of Rayners, Buckinghamshire, Bart., Treasurer of County Courts, aged 67. Sir Philip, who was the third son of William Rose, Esq., of High Wycombe, Bucks, some time Mayor of Chipping Wycombe, was admitted a Solicitor in 1836. He was for many years Secretary to the Hospital for Consumption, Brompton, and was a member of the well-known firm of Baxter, Rose, and Norton. He was appointed to a Treasurership of County Courts in 1858. Sir Philip, who was created a Baronet in 1874, was D.L. for Middlesex, and J.P. for Bucks (High Sheriff, 1878), and was a Knight Commander of the Medjidie. His family appears to have been seated at Waddesden in Bucks at the time of the Visitation of 1634. *April* 17.

ROYLE, Horace John, Esq., Solicitor, aged 31. Admitted in 1881. *March* 28.

SCOTT, Edward, Esq., Solicitor, Wigan, aged 44. Admitted in 1861. *Feb.* 11.

SNOWBALL, William, Esq., Solicitor, Town Clerk of Sunderland, aged 77. Admitted in 1832. Mr. Snowball was appointed in 1848 to the office which he held at the time of his death. *March* 28.

SNOWDEN, Hon. Francis, Senior Pusine Judge of the Supreme Court, Hong Kong. Mr. Justice Snowden, who was son of the late John Snowden, Esq., J.P. for Somersetshire, proceeded from Rugby to University College, Oxford, where he graduated, and subsequently took his M.A. He was called to the Bar by the Hon. Society of Lincoln's Inn in 1854, and in 1873 went to the Straits Settlements as Senior Magistrate, and was soon removed to the Hong Kong Bench. *April* 1.

STEVENS, Thomas, of the Middle Temple, Esq., Barrister-at-Law, aged 77. Called in 1830. *March* 18.

SYMONS, William, Esq., of Hatt, Cornwall, Solicitor, aged 65. Mr. Symons, who was admitted in 1840, was son of William Symons, Esq., of Hatt, and was Recorder of Saltash, 1846. *March* 6.

THOMSON, John Scarlett, Esq., Solicitor, aged 82. Admitted in 1822. *April* 4.

TURNER, Albert, Esq,, Solicitor, aged 58. Admitted in 1845. *Jan.* 26.

TURNER, Marshall, Esq., Solicitor, formerly of Lincoln's Inn Fields, aged 81. Admitted in 1824. *March* 26.

WARD, Charles H., Esq., of Marino House, Holywood, Belfast, Solicitor (Irel), aged 48. Admitted in 1871, Mr. Ward, says the *Belfast News Letter*, had obtained an extensive practice, and while his life was one that brought him prominently before the public, in all his spheres he gained many and warm friends. He had but lately been elected a Member of the Town Council of Belfast. *Feb.* 1.

WARRY, George, M.A., J.P., of Shapwick House, Somerset, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 87. Mr. Warry, who was father of the present Recorder of Portsmouth (a member of the same College and Inn of Court), was second son of George Warry, Esq., of Coker Hill, Somerset, and succeeded his uncle, Rev. Elias Taylor, in 1827. He proceeded from Winchester College to Trinity College, Oxford,

where he graduated as B.A. in 1817, M.A., 1828. He was J.P. for Somersetshire, and had been a member of the Western Circuit. *March* 29.

WHEATLEY, Robert Benjamin, Esq., Solicitor, aged 81. Admitted in 1823. *March* 3.

WHITBREAD, Gordon, M.A., of Lincoln's Inn, Esq., Barrister-at Law, Judge of County Courts, Clerkenwell, aged 69. Mr. Whitbread, the eldest son of Jacob Whitbread, Esq., of Loudham Hall, Suffolk, was Gold Medallist at the Charter-House, whence he proceeded to Brazenose College, Oxford (B.A., 2nd Cl. *Lit. Hum.*, 1836, M.A., 1838), and was called to the Bar in 1840. In 1851 he was made Counsel to the Duchy of Lancaster, and in 1853 to the Charity Commissioners. Private Secretary to Sir William Page Wood, both as Vice-Chancellor and Lord Justice, Mr. Whitbread became his Principal Secretary as Lord Chancellor. In 1870 he was given the County Court Judgeship, which he filled at the time of his death. *Jan.* 28.

WHITEFORD, Hamilton, Esq., Solicitor, Plymouth. Admitted in 1862. *Feb.* 19.

WIGHTMAN, SETON-, James Cullen, B.A., Camb., of Halhouse, Esq., W.S. (Scot.), aged 33. Mr. Seton-Wightman, who was second son of the late James Seton-Wightman, Esq., of Courance, Dumfriesshire, was admitted in 1875. *March* 10.

WOOLRYCH, Edmund Humphrey, J.P., of the Middle Temple, Esq., Barrister-at-Law. Mr. Woolrych, who was called to the Bar in 1839, was well known as having filled the office of Metropolitan Police Magistrate at Westminster from 1861 to 1879. He had also his place in Legal Literature as Editor of the "Metropolis Local Management Acts." He was in the Commission of the Peace for Middlesex, Kent, Essex, Hertfordshire and Sussex. *Jan.* 28.

Quarterly Notes.

The scientific jurist and the practitioner in Indian law should alike be deeply grateful to the Government of the Netherlands and to M. L. W. C. Van den Berg; to the former for directing the issue of a complete edition, accompanied by a French translation, of the Minhâdj at-tâlibîn, to the latter for suggesting and executing this most valuable work, of which one volume has already arrived in England, while two more are in the hands of the Government printers at Batavia, the capital of the Dutch Indies. The Minhâdj at-tâlibîn, an abridgment or paraphrase of the Moharrar, is an Arabic work, which dates from the 7th century of the Hegira, and embodies the doctrines of Shafei (Châfi'î, Alshafii), the founder of one of the four great divisions of the Sonni Mohammedans. M. Van den Berg tells us that the Shafeite doctrines prevail all but universally in the Indian Archipelago; and it is, of course, for the guidance of Dutch jurists in that region that the work is primarily designed. But its utility will not, by any means, end there; there are Shafeites in Ceylon, Shafeites in the Straits Settlements, Shafeites in Egypt, Shafeites, we believe, in Tripoli, Tunis, Algeria, and Morocco. Wherever the doctrines of Shafei are generally or even partially received, the printed text of the Minhâdj at-tâlibîn will be a boon to native lawyers; wherever Europeans and Shafeites are brought into contact, the translation will prove useful both to natives and to immigrants. It was a happy thought to make use of the French language, so much more widely known than the Dutch, or even the English; and to illustrate the work by references to the French *Code Civil*, which forms the basis of so many of the legal systems of Europe. No didactic

method projects the outline of an unfamiliar system so vividly on the mental tablets as that of noting its points of agreement with and variation from a system already known. M. Van den Berg has adopted this method, which will tend to facilitate the studies of a large proportion of those who are likely to use his work. We propose to return to the consideration of this welcome importation at a future date; in the meantime we cannot help expressing our earnest hope that the laudable example of the Netherlands authorities will soon be followed by other European governments, and especially by our own, the richest and most puissant of Moslem-ruling powers.

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We have received through the courtesy of the Treasurer of the Association, Mr. Francis Rawle, of Philadelphia, a copy of the *Report of the Fifth Annual Meeting of the American Bar Association*, held at Saratoga, in August 1882 (Philadelphia, 1883). The previsions which we expressed as to the probable interest of this volume, when judging it by its immediate predecessor, are shown in the result to have been well founded. Not, a few of the subjects discussed have a bearing upon our own condition in this country, of which the counterpart, *mutatis mutandis*, is so frequently to be traced in the United States. A paper, for instance, by Hon. U. M. Rose, on Titles of Statutes, well deserves the consideration of members of our Legislature. We invariably find it necessary to provide a Statute with its "Short title," by which it may be cited, and fortunately so, in these days of hurry. But there are points adverted to by Mr. Rose, besides the relation of the title to the provisions of the Act itself, perhaps the part least touching us, in which the quaint language of the New World has a deeper significance for us than might seem likely. Is "log-rolling" confined to the United

States? We think the lumber men of Maine who are credited with the invention of the phrase must unconsciously have had an eye upon the old country. The uniting in one Bill of various subjects having no natural connexion with each other is scarcely peculiar to our Transatlantic cousins. The Report of the Committee on Jurisprudence and Law Reform contains a very interesting discussion of some of the salient features of the Law of Marriage and Divorce in the United States, coupled with a suggestion which we should be very glad to see bear fruit, to the effect that it might be found possible, without any infringement of the separate sovereignties of the several States of the Union, to "gain the general consent of all to confine their jurisdiction over proceedings of divorce, as regards non-residents, within more definite, if not more narrow limits." Ere long, perhaps, there may be some such body as an English Bar Association. The idea seems at least in the air.

Reviews of New Books.

Annuaire de l'Institut de Droit International. Bruxelles: Leipzig. Librairie Muquardt, Merzbach et Falk. 1882.

The newly-published *Annuaire* of the Institute of International Law is of special interest to English readers from the fact that it contains the account of the Oxford Session of 1880, presided over by the first Oxford Professor of International Law, the master and the friend of more than one of our Oxford contributors, the late Right Hon. Mountague Bernard. It is not a little interesting to trace some of the later workings of his mind in the passages where the debates of the Session are briefly recorded. We find him, as it seems to us, adhering very closely to the lines of his old Professorial teaching, such as it has been described elsewhere in this *Review*. His desire would seem to have been to ensure that the Resolutions to be passed should bear a thoroughly practical character, and deal as little as possible with ambiguous or purely theoretical language. Thus, where

in the Resolutions on Extradition it was suggested as being a "desideratum of science that the Territorial Jurisdiction should as far as possible be required to adjudicate," Mr. Bernard proposed the deletion of the words "of science." The Rules suggested for the consideration of the Session were clearly intended to facilitate the practical working of Extradition: they might, indeed, also give an impulse to its scientific precision, but that would be *obiter*. Again, when it was proposed that in cases where the same offender was demanded by more than one State, regard should be had to the relative gravity of the several offences by which the Extradition was sought, the proposal did not approve itself to Mr. Bernard as one of practical utility. In regard to Civil War, the distinguished President upheld the Political character of deeds done at such a time, and denied them a place in any scheme of Extradition Rules. [illegible] worth while to note the fact that on this point, as [illegible] others, Mr. Bernard was outvoted.

The portion of the Record of the Oxford Meeting of the Institute which is devoted to Extradition, although in many respects one of the most interesting, does not by any means exhaust the interest of the latest published issue of the *Annuaire*. Other questions of not less wide import were brought before the Meeting in Reports, and received more or less full discussion. The Conflict of Civil Laws, for instance, constituted a subject for discussion alike as valuable and difficult as the Conflict of Penal Laws. Nationality, Domicile, Status, Capacity:—these and other thorny questions at once necessarily came to the front, affording ready scope for the play of the different minds of men of different countries, such as Twiss, Bernard, Bluntschli, Pierantoni, Rivier, Martens, Clunet, and others, who crossed swords in friendly antagonism at the Oxford Session of the Institute, seeking only who should most help on the advance of the Law of Nations, "*Justitiâ et Pace.*"

L'Extradition, Recueil renfermant *in extenso* tous les Traités conclus jusqu'au 1er Janvier, 1883, entre les Nations Civilisées. Avec une Préface de M. GEORGES LACHAUD, Avocat à la Cour d'Appel, Paris. Publié par M. F. J. KIRCHNER, Attaché à la Direction des Affaires Criminelles. London: Stevens and Sons. 1883.

Mr. Kirchner, whose smaller work on Extradition was

favourably noticed by us on its appearance, now comes before the world with a volume of considerable size and of very great interest and importance. It is not, and in no way professes to be, a Treatise, like that of Dr. Spear in the United States, of Mr. Edward Clarke, Q.C., in this country, and of M. Billot in France. It has a different and equally useful aim—that of providing counsel and solicitors who may be engaged in Extradition Cases with the *ipsissima verba* of all the various Treaties extant in this matter between the nations of the civilised world. The undertaking, it will readily be perceived, is no light one. Its execution, we are glad to be able to say, is equal to the requirements of the undertaking. Mr. Kirchner has had the co-operation of an able member of the Bar of the Court of Appeal in Paris, Maître Georges Lachaud, who contributes a Preface on the Principles and Practice of Extradition, well worthy of study by all who take an intelligent interest in so important a question.

We cannot always agree with the more[illegible]nt tendency of M. Lachaud's views, which, we suspect, have been somewhat strongly influenced by recent events in his own and other countries, and which, on some points, at least, would to our mind indicate a path of retrogression. M. Lachaud, for instance, at p. xxxiii., cites with an evident, though not definitely expressed, approbation, the Treaty of 1834 between Prussia, Russia, and Austria, engaging to mutual delivery of political offenders. We daresay there may be a good many persons who are sufficiently "scared" just now to wish that High Treason and Rebellion "à main armée," should be made Extradition crimes, but we doubt whether, in calmer moments, even those persons would not subsequently regret having departed so widely from the spirit of the modern Law of Nations. It is, we think, to be desired that in a future edition of Mr. Kirchner's most useful *Recueil*, something should appear from his own pen, enabling us the better to judge how far, if at all, his own sentiments on the question at issue may be taken to be represented by the language of Maître Lachaud. However this may be, the permanent value of the book itself is beyond doubt, and it cannot be questioned that Mr. Howard Vincent and Mr. Kirchner have made a substantial contribution to Legal and Diplomatic Literature, in their interesting collection of State Papers, bearing upon the frequently very difficult International problems raised under the name of Extradition.

The Institutes of Justinian, with English Introduction, Translation and Notes. By THOMAS COLLETT SANDARS, M.A., Barrister-at-Law, late Fellow of Oriel College, Oxford. Seventh Edition, revised and corrected. Longmans. 1883.

In a certain sense, we suppose, this seventh edition of Mr. Sandars's well-known text-book may be taken to hold a somewhat similar position to that of the recently published seventh edition of Liddell and Scott, viz., a sort of *Textus Receptus* for all future issues. Mr. Sandars occupied the field at a date when he had few, if any, competitors, and he has since held it against all comers, in regard to his speciality as offering us what may well be called the Student's Edition of the Institutes. We have had editions not a few, especially of late years, but they have more or less aimed at different objects from that which Mr. Sandars has kept in view, and he has been able to go calmly on, pursuing the even tenor of his way, with but very slight deflections either to the right hand or to the left.

This state of repose, however, could not last for ever. The world had moved, and Mr. Sandars must needs move with it, So we find that in the present "Revised and Corrected" edition while the body of the work is, in the main, identical with that of earlier issues, not a little has been done to make the book more in keeping with the advancing requirements in the present generation both of examiners and students. The "Summary" at the close of the volume will be of considerable use to the student.

Mr. Sandars still adheres to the Huschke text, which he adopted only a few years ago, and he does not go beyond. Ortolan in his notice of the Law of the Twelve Tables. We hope that his present edition is not so far a final one as to prevent his giving the student fuller references on this intricate portion of his subject in a future issue. Indeed, we are on the whole rather surprised that so little has been done for the English student in the matter of the XII. Tables. We should have thought it quite worth while to have treated them at greater length, or at least in a more full analysis, even in a General Introduction such as alone Mr. Sandars professes to give.

The foot-notes appended to Mr. Sandars's Introduction contain some new matter in the present edition, though not so much as we might have expected. It seems curious that the great importance which Sir Henry Maine has shown to have

attached to the celebrated Edict of Caracalla, extending Roman citizenship to all free subjects of the Empire, should still meet with no apparent recognition at the hands of Mr. Sandars. Either in the Introduction, in the portion relating to Family Law, or in the body of the Institutes, it would, we think, have been convenient for the student that the Editor should have brought together in juxtaposition with the three Roman marriages *in manum*, the parallels to *confarreatio*, *coemptio*, *usus*, which are so clearly traceable in Hindu Law, and in early German, Scandinavian, and Celtic Custom. In the ancient Jutland Law, indeed, M. Rodolphe Dareste has shown (*Journal des Savants*, Feb. 1881, cited in *Revue Générale du Droit*, Jan.-Feb. 1883, p. 7) that a *usus* of three winters raised the concubine to the position of a legitimate wife. We are not told whether the *usus* could be broken by temporary absence as under the XII. Tables. It would be very interesting to follow this marriage by *usus* further afield, particularly among the Celtic races in Britain, Gaul, and Ireland. We have a strong suspicion that it lies at the bottom of much of the difficulty in which questions of legitimacy are involved in early Scottish History. A tribal inheritance of marriage arising out of *usus*, among the Celtic and Celto-Scandinavian inhabitants of Scotland, would go far to explain much that is bewildering to the ordinary student of history in the conflicting claims of rival ruling Houses in Moray, Athol, and the Isles. We should be glad to see Mr. Sandars elucidate some of these problems, as juridical questions pertinent to the study of Roman Law, in the next edition of his standard text-book.

The Law Relating to Interrogatories, Production, Inspection of Documents, and Discovery, as well in the Superior as in the Inferior Courts, together with an Appendix of the Acts, Forms and Orders. By WALTER S. SICHEL, M.A., and WILLIAM CHANCE, M.A., Barristers-at-Law. Stevens and Sons. 1883.

The subject of Discovery is one of the most intricate and difficult, as well as one of the most important in litigious practice, as will readily be perceived by a glance at the numerous decisions in the last eighteen years which are summarized in the last Digest of the Law Reports under the various headings of "Interrogatories," "Production of Documents," &c. The

jurisdiction with regard to compelling Discovery originated with the Court of Chancery. The origin of the jurisdiction arose from the inability of the Courts of Common Law to compel a complete discovery of the material facts in controversy by the oaths of the parties to the suit, and also by their want of power to compel the production of deeds and other documents in the custody of one of the parties, however material to the title or defence of the other (Story, 1484). This power was extensively exercised by the Court of Chancery, and also, until 1842, by the Court of Exchequer, which possessed a concurrent jurisdiction in regard to this matter. And now, by the Judicature Act, 1875, Ord. xxxi., all judges of the High Court of Justice are empowered to compel Discovery by ordering the production and inspection of documents and otherwise, and it would appear that an action for Discovery alone may now be brought in any Division of that Court. It is somewhat strange, as remarked in the preface to the work now under review, that this subject should have attracted little attention from legal writers. Sir James Wigram and Mr. Hare have indeed discussed its general principles, but (at all events since the re-construction of the Courts in 1875) this is the first book which has appeared in recent times professing to be a practical handbook on the subject.

The volume before us opens with a short introductory sketch of the origin of the jurisdiction, and of its history up to the passing of the Judicature Acts; then follow seven chapters entitled respectively Time, Parties, Subject-Matter, Practice, Appeals, and Costs, Action for Discovery, Inspection of Public Documents; and lastly, by way of appendix, are given statutory and other forms, sections of various Acts, and rules and orders dealing with the matter in question. The work is by no means pretentious either in bulk or in professed aim; it is contained in a single small volume of less than three hundred pages, of which a third is taken up by appendices and a well arranged and sufficiently full index. It is obvious that a comprehensive and complete treatment of the subject can only be attained within such limits by means of the utmost conciseness and compression of language. The authors state their object to have been to produce "something more than a mere digest and less bulky than a formal treatise." They have certainly avoided entirely the fault of over-diffuseness, and we cannot help expressing the hope that the success of this work may induce them in future editions to treat certain

matters referred to in the index with greater fulness than they have done. Instances could be given where questions which might well have borne a somewhat detailed examination are dismissed with "on such a point see such and such cases." However, the cases are given, which is the essential point; and when the work is, as here, useful of its kind, and well done, it would be ungracious to cavil because it does not include something else. It would, no doubt, be unreasonable to complain of a tradesman who professedly supplies only English cheeses of first-rate quality, that Roquefort or Gorgonzuola is not to be obtained at his establishment, but it is conceived that it would be quite allowable to express a wish that success in his present undertaking might hereafter induce him to add further delicacies to his stock.

The decisions cited are numerous, and carried down to a very late date; and in the table of cases the convenient (and very laborious) practice is adopted of giving references to all the reports. Altogether it is evident that this work is the result of much careful and painstaking research, and we can confidently recommend it as a careful and convenient compendium, and particularly as likely to be of material assistance to those who are much engaged in Judges' Chambers, or in the County Courts.

Transactions of the National Association for the Promotion of Social Science. Nottingham Meeting, 1882. Longmans, Green and Co. 1883.

This volume, while more handy in size than some of its predecessors, contains a large amount of valuable Papers and Discussions. It is, indeed, quite worth while to take up almost any subject that catches one's eye in glancing through the book, in order to mark the diversities of thought on some of the most widely interesting questions of the day. It has been said not unfrequently of late years that the House of Lords is one of the various institutions of the country which are supposed to be "on their trial," as the phrase runs. But we do not remember to have seen the doctrine of degradation from the Peerage for poverty so broadly put and so directly advocated as we find it in the Discussion on Mr. Meryon White's Paper urging the Assimilation of the Devolution of Real and Personal Property. The view taken by Mr. Frank Safford, that if a Peer's

estate, when brought into the market, should be found unequal to leaving his successor enough to sustain the dignity of the peerage, the title should lapse, seems to us nothing short of a revolution in existing Constitutional and Peerage Law; but it is, in a certain sense, only an example of Atavism. We cannot say that this special feature of late mediæval doctrine commends itself to our sympathies. Mr. W. A. Hunter speaks strongly on the present position of the Railway question, and urges the permanence, with extended powers, of the Railway Commission. Dr. Waddilove and Miss Leigh, whose name is so well known in connection with the Homes she has established in Paris, drew attention to various difficulties arising out of the discrepancy of Marriage Laws. This very important question has been more than once the subject of discussion in our own pages; and Sir Travers Twiss, in discussing it from the point of view of the Conflict of Laws, has suggested the desirableness of promoting the Consular Marriage, by way of avoiding International complications. We are glad to know that French Jurists take a very similar view, and, indeed, a French writer in the *Bulletin* of the Society of Comparative Legislation, Paris, in reviewing Sir Travers's paper, claims for his own country that it was in advance of Great Britain in this matter. Taken as a whole, the Nottingham volume of the Social Science Transactions is worthy of a high place in the large and useful series of which it forms an integral part.

The Principles of Bankruptcy. With an Appendix, containing the General Rules, 1870-78, and Scale of Costs, the Bills of Sales Acts, 1878 and 1882, and Rules of Dec., 1878, relating to Bills of Sale. By RICHARD RINGWOOD, M.A., of the Middle Temple, Esq., Barrister-at-Law, late Scholar of Trinity College, Dublin. Second Edition. Stevens and Haynes. 1883.

Opinions may be divided as to whether Mr. Ringwood might not better have waited a little while to see if the apparently imminent changes in Bankruptcy Law really are about to come to pass. But he probably reflected that such changes had already more than once appeared imminent, and that practically nothing had yet been done beyond the promulgation of Rules. We seem, indeed, to be somewhat drifting into a condition of tinkering legislation by means of Rules, so far as Rules may be considered in a light so ancillary to legislation. We fear that

this habit, if it grows upon us, is not likely to lead us to a clearer and more definite statute law, whether on Bankruptcy or any other subject. There is much to be done beyond the issuing of Rules. Mr. Ringwood's principles, as laid down in his initial chapter, are still it seems to us the true principles, and, in the main, they still await their due recognition at the hands of the Legislature. Meanwhile, Mr. Ringwood's second edition of his *Principles* will be found of considerable utility as a handy book of reference on existing doctrine and practice.

Wharton's Law Lexicon. Seventh Edition. By J. M. LELY, Esq., M.A., Barrister-at-Law. Stevens and Sons. 1883.

Mr. Lely has here accomplished yet another work of practical utility, in remodelling and, where necessary, re-writing the well known and popular Law Lexicon, still published under the name of Mr. Wharton. The high opinion of the merits of this book, as a work of ready reference on almost every conceivable subject that is likely to be wanted by practitioner or student, expressed by us on the perusal of the last edition by Mr. Shiress Will, must be even more emphatically recorded in favour of the present issue by Mr. Lely. Much has been done in the way of diminishing the bulk of the volume, yet without sacrificing any matter of value. The seventh edition is certainly more handy than the sixth, and nevertheless it contains new articles which simply must supersede those in the sixth. New legislation has introduced new principles, and practice has been altered to agree with the new Legislation. It will not do now-a-days to trust to an old edition whether of a text book or a law dictionary. The newest and the best must be sought or none.

Much as Mr. Lely has done for *Wharton's Law Lexicon*, there are points to which his thoughtful care for its future may well be given. We are inclined to think that the mere ordinary Latin and French Law phrases which still take up a good deal of his valuable space might be excised, having regard to the existence of smaller dictionaries which contain them. On some of the more important questions, on the other hand, we think Mr. Lely might give us a little more. Thus, in treating of Copyright, he might have followed Sir James Stephen in pointing out the practically illusory character of the protection given to Lectures by the 5 & 6 Will. IV., c. 76, owing to the

cumbrous and little known conditions imposed for obtaining that protection. Mr. Lely might, in a future issue, at least refer to the Report of the Royal Commission and the Digest by Sir James Stephen printed therewith. We should be pleased if we could venture to hope that the new legislation recommended by the Commissioners, and attempted at different times since their Report in the Bills introduced by Lord John Manners and Mr. G. W. Hastings respectively, may have been carried before the eighth edition shall have become a necessity. In the meanwhile, we thank Mr. Lely for what he has done, and feel sure that, under his fostering care, *Wharton's Law Lexicon* will be still more widely known and more generally useful than before.

Principles of the Common Law. By JOHN INDERMAUR, Solicitor. Third edition. Stevens and Haynes. 1883.

We are not surprised to find that a new and revised issue of Mr. Indermaur's useful manual of the Common Law has been required within a comparatively short space of time. Changes have come over some of his subject-matter in the interval which has elapsed since his second edition, and more are clearly impending. Thus, it seems not at all unlikely that the fourth edition will have to record a change as to the Law of Evidence, should the reforms in our Criminal Jurisprudence and Practice introduced by the Law Officers of the Crown and the Home Secretary become law, of which there is, perhaps, a reasonable probability. These reforms will effect a radical change in regard to the evidence of defendants in criminal cases, which will deserve, and no doubt receive, Mr. Indermaur's most careful attention. Intended to a great extent for the student, the series of manuals, of which the present work forms not the least useful volume, has, nevertheless, a direct interest also for the practitioner. By a fuller citation of Reports, the author has greatly added to the practical value of the present edition, and it should be carefully borne in mind by the student that the notes often contain tabulated statements, or short *résumés* of the law which must by no means be omitted in the reading. Where well-known text writers, such as Byles, or Benjamin, Chitty or Campbell have given definitions or drafted a compendious statement of a doctrine of Common Law, Mr. Indermaur very rightly places such definition or compendious statement

before his reader. And where, as sometimes happens, a Judge has uttered his despair of attaining to such a happy consummation, as did no less distinguished a judge than Lord Coleridge, in the recent case of *Marshall* v. *Green*, our author similarly sets forth the acknowledged difficulty. As a clear and practical guide, we find every reason to renew the commendation we have before now bestowed upon Mr. Indermaur's *Principles of the Common Law*.

A Selection of Leading Cases in the Common Law. With Notes. By WALTER SHIRLEY SHIRLEY, B.C.L., M.A., of the Inner Temple and North-Eastern Circuit, Barrister-at-Law. Second Edition. Stevens and Son. 1883.

Mr. Shirley has, we think, greatly improved his book in the present enlarged and revised edition. While still clinging, and to a certain extent perhaps necessarily so, to the ladder which, as he says, helped him to mount—viz., to the tone of "*Joco-seria*," with which a well-known living poet is familiarising us—there deserves to be recorded a considerable increase in the serious element of the work. It is not simply a collection of "Funny Cases" or "Happy Thoughts," and it would be doing Mr. Shirley an injustice to suppose this. The Notes are much fuller than before, and in bringing them down to date the Married Women's Property Act, 1882, and other recent alterations in the Statute Book have been carefully worked in. The Appendices "A," of the principal sections of the Statutes referred to in the body of the work; "B," of Equity and Conveyancing Leading Cases; "C," of Maxims, are all useful additions. Of the Common Law Cases, which form the subject-matter of the volume, some are, we suspect, capable of an application far wider than any set forth by Mr. Shirley. Thus we are not at all sure but what, at some perhaps not very distant date, *Egerton* v. *Brownlow* may not be cited in favour of what is called the "Nationalisation of Land." If the Crown be, indeed, as is so carefully laid down in legal maxim, the sole true owner of land in England, and therefore we think it may be contended in Ireland, where English Law runs, *mutatis mutandis*, it is surely in the power of such true owner to do with its own what it will, as it is *not* in the power of the tenant, however large his estate, even though, as in the case cited, tenant in fee-simple. Time will show, and

perhaps Mr. Shirley may give us in his next issue an opinion on the further applications possible for the law laid down in *Egerton* v. *Brownlow*. The "curious doctrine" of Estoppel is treated at no inconsiderable length, under the *Duchess of Kingston's* case, and *Young* v. *Grote*. Mr. Shirley adds the dates of the several cases, a very useful feature in such a book, and he presents the student with a map, intended to be taken out, and hung up, as some men used to hang up the XXXIX. Articles in the undergraduate days, for constant reference. *O Fortunati, sua si bona nôrint!*

The Settled Land Act, 1882, with Notes and an Introductory Chapter, Precedents, and Forms. By AUBREY ST. JOHN CLERKE, B.A., of the Middle Temple, Barrister-at-Law. W. Maxwell and Son. 1882.

It has been said by some, that, among recent Treatises on the Settled Land Act, one at least is not so much concerned with explaining the Act, as with defending it from the able criticisms of the author of the present work. Mr. Clerke, already well known by his work on the Conveyancing Acts, has, we think, shown a marked improvement in this his latest legal text-book. The over-astuteness of counsel to discern loopholes and combat difficulties, upon which the late Master of the Rolls has so powerfully commented, and which offers peculiar temptation to the critic of a new statute, is far less conspicuous than in Mr. Clerke's former volume; and whilst no pains have been spared to indicate the road, the reader is not always personally conducted, in modern fashion, down every lane and bypath, to show the extent of the author's local knowledge. The introductory chapter is accurate and well arranged, and its section as to the effect upon the Settled Estates Act particularly clear. Perhaps the special value of the book is that the Act with which it is primarily concerned is treated comprehensively as a part of the whole structure of land law and conveyancing practice, and not by way of monograph, in the now common style of legal publications. Considerable attention has been paid to the forms and precedents given in Mr. Clerke's volume, but the forms in connection with applications to the Court are somewhat too terse and compressed, especially in comparison with the forms since issued by authority. The author has resisted the temptation to reprint, on separate pages, the whole or parts of other relevant statutes, and has, instead,

carefully worked them into the text of his notes. The result is a book on which the practitioner can rely as intelligently incorporating, in due fusion, both the new statute and the law and practice of which it forms part.

The Liability of Employers. By W. HOWLAND ROBERTS, and GEORGE HENRY WALLACE, M.A., Barristers-at-Law. Second Edition. Reeves and Turner. 1882.

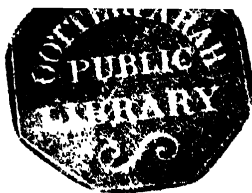
This little volume has reached its second Edition, and we can confidently say of the new issue that it is excellent. Messrs. Roberts and Wallace deal with an important portion of the law of Master and Servant; the liability of the master towards the servant in respect of injuries sustained by the latter while in the employ of the former. This book collects and condenses with commendable brevity and lucidity the chief topics of its subject-matter, and accurately expounds the law. It is not an annotated edition of the Employers' Liability Act, 1880, but a Treatise which deals generally, if concisely, with the law of the relations of master and servant; both as affected and unaffected by the Act of 1880, and as between the employer and employed. It also deals with the relations of the employer and third parties as brought about by the acts of those in the service of the employer. An Act so important as that of 1880 naturally necessitated the devotion of a considerable portion of the work to the elucidation of the changes wrought thereby; and thus we find that out of the eight chapters into which the book is divided, four are appropriated to the Employers' Liability Act. We would suggest to the authors that in another edition it might be advisable to print that Act in larger type, and in some more prominent position than at present, and not to relegate it to the obscurity of small type in the midst of the Appendices. The reader might easily master the contents without becoming aware that the Act formed an integral part of the work. The aim of Messrs. Roberts and Wallace has been to set out first the general law, and then deal specifically with the provisions of the Act of 1880, and in this aim we are able to say that they have been successful. The authors have the courage of their convictions, for whenever they come across a knotty point, whether raised by themselves or not, they are always ready with a solution, and that most frequently a good one, and their references are generally accurate.

The Exchequer Rolls of Scotland. Edited by GEORGE BURNETT, Lyon King of Arms. Vols. V. and VI. (1437-54 and 1455-60.) Edinburgh: H.M. General Register House. 1882 and 1883.

The publications issued under the direction of the Lord Clerk Register of Scotland are not so well known in England as they should be. The officer of the State who authorises them fills, in regard to the Scottish Records, a position analogous to that of the Master of the Rolls in this country. But our Scottish brethren have managed to get a somewhat longer tether in the matter of Prefaces than the editors of the Rolls Series, and the consequence is a somewhat greater fulness of detail and minuteness of critical narrative which renders the Scottish Series peculiarly valuable and instructive. The volumes now before us, forming the latter part of a set of Records of great utility to the student of history, are, like their predecessors, edited by the successor in office of famous Davie Lyndsay, the Lord Lyon King of Arms, a familiar figure to many who perhaps know little more about Scottish heraldry than the fact that Sir David Lindsay of the Mount was Lyon King of Arms. The office is one which distinctly marks out its holder for historical and literary studies, and the present incumbent has worthily upheld that side of the *persona* which he fills without neglecting other aspects even more directly pertinent thereto. The value of the Exchequer Rolls, as of any other such Public Archives, consists mainly, of course, in their furnishing us with the dry bones of National history. The bones are, in truth, often exceeding dry, but Lyon shows in his able and interesting Prefaces, how they may be made to live. The payments made out of the Exchequer bring us face to face with many a crucial point in history and genealogy, and these difficulties are among the severest tests of an Editor of such Records. It is not enough that he should be a good reader of the Records themselves: that needs not to be said of the distinguished scholars who in each portion of the United Kingdom have devoted themselves to this most important work. There is need, besides all this, of the combination of the Juridical with the Historical sense, as some twenty years ago the two were combined in the schools of Oxford. Thus, in the Exchequer Rolls, in the volumes now before us, we meet with a genealogical crux, such as that of the "Domina Elizabeth," wife of Sir William Stewart of Dalswyntown (Vol. vi., p. 169; Preface, p. cxiii.),

as to whom, if the expression "Domina Elizabeth" is to be strictly construed in its ordinary mediæval acceptation, it is difficult to say who she can have been. The learned Editor is himself unable, as yet, to solve the problem; we are inclined to suggest a doubt whether the designation is always to be so strictly construed in mediæval documents as to absolutely connote blood Royal. It seems to us that we have found it more loosely used at times. Questions of no small importance for a right apprehension of the modes in use at various early dates for denoting the creation of the rank of Earl come under the notice of the learned Editor of the Exchequer Rolls. Thus in the preface to Vol. v., p. xcvi., in a note to the circumstance mentioned in the text, that Sir James Crichton, of Frendraught, eldest son of the Chancellor, was "beltit Earl of Moray," Mr. Burnett takes care to point out that while on the one hand, "cinctura gladii" was in Scotland, as elsewhere, a "usual ceremony on the erection of a new earldom," it would be "an entire misapprehension to suppose that an Earl was ever made by belting alone." The "cinctura," though it occasionally, as a matter of fact, preceded the issue of the Charter of Erection, always presupposed it. This is a point the more worthy of being brought out that it has been the subject, before now, of the very "misapprehension" from which Lyon King clears it; and it seems very certain that the erroneous view, though denounced by John Riddell, is still far from being discountenanced by English writers on Scottish Peerage Law.

It would be easy to go into many more details, and it would be interesting to discuss some of the numerous points in Constitutional Law and History and Peerage Law upon which the Scottish Exchequer Rolls throw a vivid light. As an instance in point connected with a case which has been much before the public, and which is yet far from being laid to rest—the controversy concerning the Earldom of Mar—we think it only fair to the unquestionable heir of line of the ancient Earls of the Celtic house of Mar to point to the entry (Vol. v., p. 235) of Lord Erskine's son, in 1446, as "Magister de Marr," a designation of which the legal significance in Scotland is very strong. And the father of that "Master" himself granted charters as "Earl of Mar, Lord Erskine." All students of Mediæval Law and History should be grateful to Lyon King for his excellent edition of the *Exchequer Rolls of Scotland*.



THE

LAW MAGAZINE AND REVIEW.

No. CCXLIX.—August, 1883.

I.—THE LIABILITIES OF SHIPOWNERS AT HOME AND ABROAD.

THE Limitation of a shipowner's Liability for loss arising from circumstances connected with his ships, and especially with respect to those cases where the loss is caused by collision, must be a subject of interest both as a question of law and of commerce.

It may be interesting to state what appears to be the argument for and against any limitation, and also what the law on the subject is in various maritime States, and how in any case it has assumed its present form.

Speaking generally, the argument for unlimited liability is based on the universal truth and equity of the maxims, *Respondeat superior* (4 Inst., 114), and *Qui facit per alium facit per se* (Branch's Maxims, 5th Ed., p. 179), which, though each in fact perfectly general in application, are in practice usually applied to cases of Tort and Contract respectively, but, for the present purpose, may be both paraphrased by saying that a shipowner, as employer and principal, should be answerable for all the actions of his servants or agents in the execution of his business.

The extreme advocates of the opposite view, without adducing any precise rule of law in support of it—except perhaps a very liberal rendering of Ex., ch. xxi., vv. 28-32—say that it is unreasonable, where an owner has fulfilled his

obligations by taking care to equip and man his ship, and by putting a properly qualified person in charge of her, to hold him liable for matters over which he can have no personal control.

Our law is at present a compromise between these two opposing views, leaving an owner liable to his last sixpence for any damage to the cause of which he is privy, but limiting his liability in other cases to the arbitrary sum of £15 per ton where there is personal injury, and £8 per ton where the injury is to property alone, on every ton of his own vessel's measurement.

At the same time there is a remedy nominally for the whole amount of damage done against the actual wrong-doer—the captain, pilot,* or officer of the watch—who gives a wrong order, or even the look-out who sleeps, or helmsman who puts his helm the wrong way either by mistake or by carelessness; though, whilst there is something tangible in the shape of a ship or a solvent owner to sue, other persons are seldom actually brought before the Court. Still, in some cases, *e.g.*, when the ship is the property of the Crown, and therefore not liable to action at the suit of a subject, the captain is always made the nominal defendant† though the suit is in fact defended, and the damages, if any are found to be due, paid by the Crown; and when it is thought that a shipowner may escape in consequence of his ship being under compulsory pilotage, where the pilot is fairly solvent, or in popular language "worth powder and shot," an action is frequently brought against him.

If we seek for the origin of some principle of Limitation of Liability of an owner of property for damage done by a

* A pilot whose employment is compulsory, usually has his liability limited by special statute, to a fixed sum, not, as a rule, exceeding £100.

† If the Crown were not to defend the action, a curious question of liability would arise as to how far the captain of a man-of-war is responsible for the acts of his subordinates, in whose appointment he has no voice.

servant or agent in the using of that property, or by the property itself when not under control, we find in the passage of the Mosaic Law, already referred to, a very clear indication of it, as follows :—

Exodus XXI.

28. " If an ox gore a man or a woman, that they die : then shall the ox be surely stoned, and his flesh shall not be eaten ; but the owner of the ox shall be quit."

Here the owner of the property doing the damage is mulcted in the value of the property, though apparently the relations of the person killed get no redress.

29. " But if the ox were wont to push with his horn in time past, and it hath been testified to his owner, and he hath not kept him in, but that he hath killed a man or a woman ; the ox shall be stoned, and his owner also shall be put to death."

30. " If there be laid on him a sum of money, then he shall give for the ransom of his life whatsoever is laid upon him."

That is, that if the injury has been caused by the negligence of the owner personally, in the language of the Merchant Shipping Act, " with his actual fault and privity," the owner is liable to pay just what sum the judge decrees to the relations, who have a remedy *in personam* of a most practical sort, though this is limited to the case where the injury is inflicted on a free man or woman,* in the case of servants the liability is limited by the verse next but one following :—

32. "If the ox shall push a manservant or a maidservant ; he shall give unto their master thirty shekels of silver, and the ox shall be stoned."

If, as is generally believed, the silver shekel was only of the same intrinsic value as half-a-crown, this seems indeed

* Vitæ autem in libero homine æstimatio non fit. Grot. De Jure Belli et Pacis. Lib. II., ch. xvii., sec. 13.

a very small value for a human being, only £3 15s. of our money, but it must be remembered that the value of money, or its buying power, was enormously greater in those days.*

In the last 300 years, since the reign of Henry VIII., money has decreased in value 1,200 per cent., it taking a shilling now to buy what a penny would have purchased in those days (Froude, Hist. of Eng., Vol. I., p. 26).

In the Roman Law, we find at a very early date the principle of Limitation of Liability in cases similar to those already referred to in the Mosaic Law, as according to the testimony of Justinian (Inst. Lib. iv., Tit. ix.) it was one of the matters already codified in B.C. 450 by the Law of the Twelve Tables, with this considerable difference however from the Mosaic Law, that the latter, as we have seen, only referred to cases where there was no *scienter* on the part of the owner as to the viciousness of the beast; the latter extends to all cases, as for example, "*si equus calcitrosus calce percusserit, aut bos cornu petere solitus petierit,*" (if a kicking horse should kick, or an ox in the habit of using his horns should gore,) and the principle was extended by the Lex Aquilia (467 A.U.C., or about 287 B.C.) to cases in which the damage was done by the actual personal contact of a slave or person not *sui juris*, and was subsequently further extended to other cases

* For example, David bought from Araunah, the Jebusite, a threshing floor, the site of which was large enough to build the Temple upon, and some oxen, with their implements, for 50 shekels = £6 5s. According to the account of the matter in II. Sam. xxiv., 24, though according to the account in I. Chron. xxi., 25, which by the internal evidence of I. Chap. ix., was compiled after the Babylonian captivity, the price is stated at 600 shekels of gold, £1,095 of our money. The two accounts may possibly be reconciled on the hypothesis that when the account in the Book of Samuel was written (circa B.C. 1000) the buying power of 50 shekels was equivalent to that of 600 shekels when the Book of Chronicles was composed (circa B.C. 500), though the method of reconciliation suggested in the Speaker's Commentary is more satisfactory, *i.e.*, that the first 50 shekels are golden ones = £1 16s. 6d. each, and therefore = £91 5s., and the latter are silver shekels in value, though in fact "of gold by weight" = to about £75.

where there was no personal contact. But between the time at which Gaius composed his Commentaries, circa 200 A.D., and that of the Institutes of Justinian (A.D. 529), public opinion, enlightened by Christianity, had effectually protested against the iniquity of encouraging the head of a family to clear himself of liability for the acts of the members of his family by surrendering the unfortunate cause (Inst. Lib. iv., Tit. viii., sec. 7):

In considering the question of the Aquilian Law and the Noxal Action it will be seen that there is a close resemblance between them and the present law of Limitation of Liability of Shipowners, as the Lex Aquilia gives the right to recover the damage, and the Noxal Action is practically a plea for limitation of that damage to the value, not it is true of the ship, but of the servant or slave in charge of the ship, on the ground that the owner had no control over him, that is, had no privity with the wrongful act that caused the damage.

That the Aquilian Law applied in cases of damage by collision is abundantly clear from the extract from the Digest (Dig. ix., Tit. ii., Ad Legem Aquiliam, Fr. 29), given in Pardessus, Vol. I., p. 94.

Sec. 2. " Si navis tua impacta in meam scapham damnum mihi dedit, quæsitum est quæ actio mihi competeret. Et ait Proculus, si in potestate nautarum fuit, ne id accideret, et culpâ eorum factum sit, lege Aquiliâ cum nautis agendum; quia parvi refert, navem immittendo, aut servaculum (serraculum) ad navem ducendo, an tuâ manu dederis, quia omnibus his modis per te damno adficior; sed, si fune rupto, aut, cum a nullo regeretur navis incurrisset, cum domino agendum non esse.

Sec. 4. " Si navis alteram contra se venientem obruisset, aut in gubernatorem, aut in ducatorem, actionem competere damni injuriæ Alfenus ait, sed, si tanta vis navi facta sit, quæ temperari non potuit, nullam in dominum dandam

actionem: sin autem culpâ nautarum id factum sit, puto Aquiliæ sufficere."*

* The exact meaning of this passage has been discussed from the days of Bynkershoek to the present time. I have, on a former occasion, paraphrased it thus:—

Sec. 2. "If your vessel fouling my boat, damages it, the question arises what is the nature of my action against you? Proculus is of opinion that if the sailors could have avoided the accident, and that it happened by their default, that an action under the Aquilian Law lies against the sailors, because it is immaterial, wnether you do the damage by the impact of the ship itself or by a steer-oar drawn after the ship, or with your own hands, as in each case, I suffer damage by your act. But if the other vessel fouls yours because she has broken adrift from her moorings or when she is out of command, you have no action against the owner."

Sec. 4. "If one vessel should run down another coming towards it, an action for the injury sustained lies against either the master or helmsman, so says Alfenus, but if the ship had so much way on that it was not possible to avoid the collision, no action lies against the owner, but if it has been caused by the default of the crew; I consider that an action under the Aquilian Law is the proper remedy."

A rendering sufficient for the matter then under consideration. But on the question of liability the difficulty arises as to whether in the first instance given in each section the action is against the wrongdoer alone as distinguished from the shipowner, and in the latter case of sec. 2, whether the word "non" is not altogether an unwarranted interpolation. (See Bynkershoek, Obs. Jur. Rom., L. iv., c. xvi., & Quæst. Jur. Priv., L. iv., c. xviii. Franc. Stypmann, Jus Maritimum, c. xix., ss. 13—25.) That view which seems least to strain the natural interpretation would appear to be, that in section 2 we have the view of Proculus as to the law, which is, that if any person was guilty of negligence, he alone is liable and personally, and if the accident was what we call inevitable or by "force majeure," whilst it is clear there could be no action against a member of the crew, it is only necessary to state that there is none against the shipowner (see *River Wear Commissioners* v. *Adamson*, 2 App. Ca. 743). And that in section 4 we have first the opinion of Alfenus agreeing with that of Proculus on the first point and silent on the second, possibly because it had not been submitted to him, and then in the latter part of the section the view of the compiler of the Digest himself taking a more general view than either of the others, and not looking to any special causes of damage, but practically agreeing with Proculus on both points, though both he and Proculus adopt a view of inevitable accident, much in accord with that of continental nations but considerably more liberal than that of the English law at the present time, which would probably enquire

From which also it appears from the alternative expression used, that if the action would lie, it might be brought against the crew (cum nautis) generally, the master (gubernator), the pilot (ducator): if these former were *sui juris* the owner would be excused, unless the wrongful damage were done in pursuance of his direct orders, *i.e.*, as his agents; if they were not *sui juris*, he would be excused from any liability on pleading the Noxal Action, and surrendering the wrongdoer. This view seems consistent with all the examples in Just. Inst., L. iv., Titt. 3 & 5. The subject now naturally divides itself into two parts; (1) The liability of an owner for the actions; and (2) for the contracts of his master; and having considered the curious analogy of the Noxal Law, we must dismiss it from our minds, except in so far as it shows a tendency in Human Law to mitigate the severity that absolute justice sometimes causes —*summum jus, summa injuria*—but as the "domestic institution" has, so far as British ships are concerned, ceased to exist, we are thrown back on the relations between the owner and freemen, his agents and servants indeed, but who are *sui juris*. We have seen that by the law of Rome the owner would be liable for what was done in pursuance of his orders, or with his privity, and as to third parties, he holds out his master as his agent to make all the contracts customary for the person in charge of the ship, he becomes liable on such contracts, *e.g.*, on Bills of Lading, but he would not be liable for the acts of such persons, done without his orders, and outside their duty.

Now in the case which comes most frequently before the Courts—collision—it certainly can never be any part of a

why the rope or cable carried away? how it was secured? and whether it was of good quality? and why the ship was left without anyone in charge of her? and how it came about that she was going at such a speed that her way could not be reduced in time to avoid a collision? All which questions might, however, in easily conceivable circumstances, be answered satisfactorily.

master's duty to disobey the regulations, and run down another ship, but whereas by the Roman Law, as we have seen, the responsibility in such case would remain with the master or helmsman, or officer of the watch, that is, with the author of the mischief, the Common Law of England maintains that an employer " is responsible for the wrongful act of his servant, even if it be wilful or reckless or malicious, provided the act is done by the servant within the scope of his employment, and in furtherance of his employer's business, or for his employer's benefit (*Huzzey* v. *Field*, 2 Cr. M. & R. 440), but if the servant at the time he does the wrong, is not acting in the execution of his master's business and within the scope of his employment as his servant, but is carrying into effect some exclusive object of his own, the master will not be answerable for his act" (Addison on Torts, 4th ed., p. 24); and though from the nature of the case no very exact application of this principle of the Common Law can be found as bearing on collisions between ships, a very close analogy may be drawn between such collisions and those of carriages, and from such cases we learn that an accident caused by a coachman negligently driving his master's carriage on a route selected by himself for his own purposes, and which was not the best and most natural one, but nevertheless led to a terminus to which he was bound to proceed on his employer's business, was so far acting " within the scope of his employment, and in furtherance of his master's business" as to render his master responsible for the consequences (*Joel* v. *Morison*, 6 C. and P. 501). But if he was driving on his own business his master is not liable even if the coachman has, in course of his drive, executed some of his master's business, (*Rayner* v. *Mitchell*, 2 C.P.D. 357), and again, that if the coachman wilfully or maliciously causes the accident the master will not be responsible, even if at the time the coachman was engaged on the master's business, as such wilful or malicious act is

not within the scope of his employment (*McManus* v. *Crichett*, 1 East 106). Adapting these three leading principles to the case of ships, we arrive at the conclusion that at Common Law the shipowner would be liable for a collision caused by negligence of his servants, so long as the ship was proceeding on her voyage, even if, for purposes of his own, the master was not pursuing the most direct or customary route, but he would not be liable for injury caused by a collision when the ship was pursuing a voyage unauthorised by him, *e.g.*, if the crew had forced the captain to give up his voyage, and were bringing the ship back in spite of his wishes, and without necessity, or probably if the captain was barratrously deviating from his voyage;* neither would he be liable if the captain wilfully and maliciously ran down the other ship as, for example, if to prevent her passing him to windward, he maliciously hauled his wind as she was passing, and so ran her down, or wilfully refused to give way when it was his duty to do so. There is abundant authority for the first proposition in the every-day practice of the Courts both of Common Law and Admiralty, and for the last several cases (*The Druid*, 1 W. Rob. 391; *The Ida*, Lush. 6; The *Underwriter* argument, 36 L.T. Rep. N.S. 159), whilst for the second there is no direct authority in cases of Maritime collision. Whilst, however, admitting that this view of the law would probably be acted upon at the present day as binding in all Courts in this country, it is by no means certain that the law administered originally in the Courts of Admiralty was not more nearly akin to the Roman Law above referred to, though in consequence of the special provision of arrest of the *res*, and proceedings against

* The recent case of the *Ferret* (*Phillips* v. *The Highland Rail. Co.*, 8 App. Cas. 329), shows that an owner's responsibility on his master's contract with seamen for wages continues even when the ship has been stolen, if the seamen remain on board and are not *participes criminis*.

it, the owner, when the ship remained afloat, was obliged to come in and, as it were, adopt the acts of his master as his own. Thus—"The Torts of the master cannot be supposed to hypothecate the ship; nor, in my humble judgment, in strictness of speech, to produce any lien on it. How, then, is the ship forfeited and lost to the owner by his captain's misconduct? In my apprehension only in this collateral way, that it is (agreeably to the practice of the Roman Law as to its own citizens, extended by the modern maritime law to foreigners) arrested until he gives bail or *fide jussore*, and sold for defaults and contempts if he will not appear." (Brown's Adm. Law, 143.)

Bynkershoek, speaking of the general maritime law in his time, though he admits a difference of opinion, throws all his weight on the side of this view. He says:—

"But I, whatever others say, would not make bold to assert that if the damage is done by the fault or fraud of the master, restitution can be had from the owner. On this head reference should be made to the Decrees of Law which I have set out at length in Book I., chap. 19, of the Questions of Public Law, and by them it is established that the shipowner is bound by the acts of his shipmaster indeed, but not by another act than that which has been assigned to him to do. Ulpianus gives many examples of this (L. I., sec. 12, Para. de Exercit. act.) Now everything which is assigned to him to do is so assigned by mandate expressed or implied, and if the master goes wrong whilst in the execution of his mandate, the shipowner is liable also. But as it is no part of his mandate to run down other ships by fraud or fault, if he does so, he himself, not the shipowner, must pay for the damage he has done."*

* "Ego vero, quicquid alii dicant, non ausim adfirmare, si dolo vel culpa magistri damnum datum sit, id ab exercitore esse resarciendum. Repetenda in hanc rem sunt Decreta juris, quæ prolixe exequutus sum *Lib. I. Quæst. Jur., Publ.*, *c.* 19, et ex iis constabit, ex facto quidem magistri teneri exerci-

Loccenius also writing on the subject, A.D. 1674, agrees with this view. He says :—

"If a ship damages or sinks another vessel by coming into collision with it in consequence of having unfit tackle, whether because they were not properly secured or improperly fitted, or because she has been sent to sea without a proper officer to direct her course, an action of damage against the owner is the suitable remedy given, if he has shipped too small a crew to man her, but if the owner was free from blame, the action must be brought against the master of the ship, whether the cause of the damage was that he choose an unfit crew or was guilty of personal negligence, because in either case his default was the cause of the damage, but that constitutes a default which a person is able to avoid by taking due care and which he does not avoid, and special care and superintendence is demanded from a shipmaster." Then after stating that Mithridates put one of his admirals to death, notwithstanding the plea of inevitable accident, he proceeds, "but if in the darkness of night, or a fog, the ship becomes unmanageable in consequence of the darkness of the weather (a fact which must be proved on oath), no action is given against either the master or owner, because in that case the violence is done against their will by a cause beyond their control. Again, in some cases the owner and master can both clear themselves from default, but not the crew or the officer of the watch or the pilot, and then an action for the damage should be commenced against these latter. But by the Maritime Law of Wisby, and by the Statute Law of many nations, one-half

torem, sed non ex alio facto, quam cui præpositus est, ut variis exemplis id illustrat Ulpianus in *L. I.*, *sec.* 12 *Para. de Exercit. act.* Omnis præpositio est ex Mandato, sive expresso, sive tacito, aut si quid delinquat magister, dum id mandatum exsequitur, etiam exercitor tenetur. Ei autem mandatum non est aliorum naves dolo vel culpa obruere, quod si fecerit, ipse damnum, quod dedit, luat, non exercitor."

Bynkershoek, Quæst. Jur. Priv. L. iv. c. xxiii.

of the damage is decreed to be paid by the damaging ship to the damaged one, if the damage happened without any fault of the owner, and he is able to prove it by oath, the damaged party bearing the other half of the loss himself, but that half and half rule is only used in consequence of the difficulty of proving default. By the Law of Sweden one-third part of the damage is given if it was the result of accident not default. But it is to be understood that the Swedish Law deals with a case when some slight oversight not a clear default caused the accident.

On the other hand no one is or ought to be bound to make good damage the result of pure accident. This is shown by the words of the Swedish Code (Bör androm fkada, &c.), which signify the act of injuring, but scarcely include a clear default. But if the injury is caused by the fault of the owner, and the injured party is able to prove the fact, and at the same time is able to clear himself of all blame, in that case the owner of the ship is bound to make good the whole damage." (Joannis Loccenii De Jure Maritimo, L. 16 III., c. viii., sec. ii.)

The original, which has been translated above, is as follows:—"Navis funibus invalidis ruptis aut non bene alligata, aut non ita gubernata, ut debebat, aut absque ductore in mare immissa, si aliam navim incurrendo ei damnum dederit, vel eam depresserit; actio damni dati contra exercitorem competit, si navim minus idoneis hominibus commiserit. Si vero exercitor fit extra culpam, adversus magistrum navis datur actio, vel quod non idoneos ministros elegerit, vel incuria ipse quid admiserit, unde damnum datum est, quia est damnum culpa datum. Culpa autem est, quod, quum a diligente provideri potuit, non est provisum. A magistro navis autem præcipua diligentia et inspectio requiretur.

"Mithridates rex Ponti navarchum, qui Chia navi regis navem prætoriam incurrerat læseratque, capitis pœna

adfecit. Quamvis navarchus vim tempestatis obtenderet, tamen illum hoc potuisse et debuisse præcavere, si prudentius rexissit navim, cumque per insidias hoc fecisse rex existimavit; uti refert Appianus in Mithridat.

Si vero noctu aut cœlo turbido per tempestatem tanta vis navi facta sit, quæ temperari non potuerit (quod testibus aut juramento adseret) nulla in magistrum aut dominum navis danda est actio, est enim hoc invitum per violentiam, cuius principium est extra patientem. Aliquando etiam dominus vel magister navis potest carere culpâ, non vero nautæ, aut gubernator navis, aut ductor; et tunc actio damni dati contra eos instituitur.

Alias legibus maritimis Wisbyens. (Artt. 27, 50, 70) et multorum popularum statutis dimidium damni dati præstatur læsæ navi a lædente, si absque culpa domini navis damnum acciderit, idque jurato adseveraro posset, alterum damni dimidium fert ipse læsus, damnum autem tale dividi quoque solet ob culpæ probandæ difficultatem. (Grot. de Jure Belli et Pacis, Lib. II., ch. xvii., sec. 21).* Jure Sued. est pars tertia damni dati, si casu non culpâ factum sit

* Grotius, de Jure Belli et Pacis, Lib. ii., ch. xvii. (Whewell's Translation).

Sec. 20. (2) Nor if either soldiers or sailors, contrary to command, do any damage to friends, are the kings liable; which has been proved by the testimony both of France and England: that anyone, without any fault of his own, is bound by the acts of his agents, is not a part of the Law of Nations; by which this controversy must be decided, but a part of the Civil Law; nor of that in general, but introduced against sailors and certain others, for peculiar reasons. And sentence was given to that effect by the Judges of the Supreme Court, against certain Pomeranians; and that according to the precedent of a similar cause, adjudged two centuries ago.

Sec. 21. It is to be noted also that the rule, that if a slave (mancipium) or any animal cause damage or loss, it creates a liability in the Master, is also a creation of Civil Law. For the Master who is not in fault is not liable by Natural Law: as also he is not whose ship, without any fault of his, damages another's ship: although by the laws of many nations, and by ours, the damage in such case is commonly divided, on account of the difficulty of proving where the fault lay.

(c. 9, Jur. Naut. Sued. ubi vide*) quid porro ad hoc requiratur.

Existimandum vero, legem Suedicam hic non latam culpam, sed levem quæ casum præcesserit intelligere. Alias damnum mere fatale nemo præstare potest aut debet. Hoc innuunt verba (d. c. Bör androm fkada, &c.), quæ actum nocendi significant, licet haud latâ culpâ intervenientem. Si vero culpâ domini navis damnum datum sit, idque læsus probare, et se ipsum ab omni culpa purgare possit; eo casu dominus navis totum damnum solus sarcire tenetur."

If this be a correct view of the Maritime Law, it is obvious that any law or custom which makes an owner liable for all acts of his master done without any fault or privity on the part of the owner, whether to the full value of his ship or a fixed rate per ton, is so far from being a limitation of his liability a very great extension of it, but yet one of which we see indications in the Maritime Laws of the Northern nations, as quoted by Loccenius, and which was most natural to arise, from the difficulty of proof, not only of who was to blame, but also, where a ship was in a foreign port, the difficulty, if not impossibility, of ascertaining whether the person in charge of her was or was not actually her owner; and no doubt, in the earlier days of navigation, the master was more frequently owner

* The passage referred to is Tit. VII., ch. ix. of the Storthing Lagh of Sweden (Pardessus, Vol. III., p. 129), and may be rendered as follows:—

It may happen that damage is done to a vessel by accident, without any premeditation—(the original is Medh "Wadha och eigh medh Wilia, which Pardessus translates, sans dessein prémédité, but would appear to be better rendered into English by mishap, and not of his own will); for example, if a ship runs against the cable of another vessel and carries it away, or if it loses its anchor by being suddenly brought up; the doer of the damage shall pay a third of it, and be free from making further amend, provided that the fact of its being an accident, and that there was no intention to do damage is established by the declaration of six men.

Section 1. If any life has been lost in consequence of the event, the person causing it shall pay 40 marks. But he shall be condemned or absolved according as 12 men declare that the accident was the result of an intention to hurt or of a pure chance.

or part owner than at the present day ; * anyhow, he would have the ship in his apparent possession or control, and the executive of the place where the case was tried would not unnaturally first arrest the ship, his apparent property, and also means of escaping judgment, and then issue execution for the judgment against it, leaving him to settle his accounts with his owner, if he was in fact only a master, on his return home.

This is pretty clearly expressed in the Hanseatic Maritime Code of 1614.

Title X.

Art. II. If a ship is lying in harbour or in a roadstead and another ship under sail sinks her or does her damage, then if it was caused by the want of skill or negligence of the master, then the master who has done the damage is bound to make it good out of his own money and out of whatever property he may have ; but if he has not enough, then the residue is made good out of his ship, whilst the cargo belonging to merchants is clear. But on the other hand, if the accident were inevitable, each ship is bound to repair the joint damage according to the arbitration of experts,† and again, in the French Ordonnance de la Marine, of 1681, Valin in commenting on the passage concerning damage (Liv. III., Tit. vii., Art 2), which is as follows: "Si toutefois l'abordage avoit été fait par la faute de

* "The Custom of the later Ages has been such, that few have gone out in that Condition"—as Masters of Ships—"but those that have commonly had Shares or Parts in the same vessel" (Dom. of the Sea, 2nd Ed., p. 443. Molloy de Jure Maritimo, A.D. 1707, p. 221).

† Wann ein Schif in dem Haven oder auf der Reyde lieget, und ein ander Schif, welches unter segel ist, laufft dasselbige in Grund, oder thut ihm sonst Schaden, geschicht es aus Unvorsichtigkeit und Versæumnis des Schiffers, der Schiffer, welcher den Schaden gethan hat, soll denselben mit seinem eigenen Gelde bezahlen, so weit sich seine Güter erstrecken ; Hat er aber das Vermoegen nicht, so soll das Schif den Schaden abtragen, und das Kaufmann's Güter frey seyn. Geschicht es aber aus Noth, sollen beyde Schiffe den Schaden bessern, jedoch nach guter Leute Erkœntnis.

l'un des maîtres, le dommage sera réparé par celui qui l'aura causé," admits indeed, that at that time, in consequence of a previous provision (Liv. II., Tit. viii., Art. 2), the ship and freight were liable, yet in reference to the latter article, which is as follows: "Les propriétaires de navires *seront* responsables des faits du maître; mais ils en demeureront déchargés en abandonnant leurs batiments et le fret," says, when the obligation is peculiar and personal to the master, a direct action and execution is only given against him, as, for example, to carry out the terms of a Bill of Lading, to answer for his own acts, errors or offences. Any other judgment can only be executed against the proprietor, or what is the same thing, if they are against the master, can only be so in a qualified sense as representing the owner, as far as the value of the property he has in his possession belonging to the latter.

I would also add to this that the use of the word *seront* in the future tense appears to be strong evidence that, previous to the passing of the Ordonnance, it had been at least very doubtful whether an owner had been responsible at all for the acts, as distinguished from the contracts of his master, for these latter, he had been, as already observed, responsible to his last shilling.

And indeed, there is a difficulty in reconciling Valin's broad statement under the first Article cited above, that the owner is liable for a collision caused by the master's act, with the limitation he puts upon the natural interpretation of the second.

Again, in the Danish Code of 1683 (which is still in force, though now under consideration), we find a similar provision that the remedy is "against the captain, and if he is not sufficiently solvent then against his ship (Bk. IV., ch. iii., Art 4)."

The first indication that I have been able to find in any of the earlier Codes of Maritime Law of the owner's

liability being definitely recognised and at the same time limited, is in the Ordinance of Rotterdam (1721) where it is laid down, "That the owners *shall not* be answerable for any act of the master done without their order any further than their part of the ship amounts to." Though previous to the passing of the first Limitation of Liability Act (1734), the law marine had come to be understood in this country to be that the owner was liable to any extent for the acts of his master. Thus, in the "Dominion of the Sea," written in the reign of Queen Anne, we find (p. 443) :—

"In the preferring therefore of a master, his ability and honesty are to be considered, since on him rests the charge not only of the vessel but of the Lading ; their very Actions subjecting the owner to answer for *all damage* that shall be done or occasioned by him or his Mariners, both in the Port, or at Sea, to the Lading or Goods of the Merchants or Laders ; and they are made liable, as well by the Common Law of England as the Law Marine." (See also Abbott on Shipping, 5th Ed., Ch. v., and *The Dundee*, 1 Hagg., Adm. Rep. p. 120.)

From 1734, several statutes have been passed in this country, regulating the liability of shipowners.

The first, in the year 1734 (7 Geo. II., ch. 15) though passed on the petition of Shipowners of the Port of London, with a special view of limiting their Liability to the value of the ship, freight and appurtenances, in cases of embezzlement or robbery by master and crew, appears to go further, and also to include in general terms any loss or damage, as, after specifying these special forms of loss, it goes on to say, "or for any act, matter or thing, damage or forfeiture done, occasioned or incurred from and after the said 24th day of June, 1734, by the said master, or mariners, or any of them."

The avowed object of this and the next, and presumably

of the subsequent statutes, was to prevent "merchants and others" being "greatly discouraged from adventuring their fortunes as owners of ships and vessels, which will necessarily tend to the prejudice of the trade and navigation of this kingdom," and no doubt this was true so far as the special mischief against which the statute was directed was concerned, and as regards the shipowner's interest, but hardly applies with equal force in the more general case of loss by collision, as in that case the estimation of loss is not in proportion to the value of the shipowner's property which is injured, but of that which does the injury, and is in any case clearly against the interest of the shipper, and therefore scarcely in accord with the general spirit of recent legislation, which, since the repeal of the Navigation Laws, has left shipping pretty much to look out for itself in other matters, on the supposition that the best way to encourage trade is to induce merchants to ship goods, which ships will always be found ready to carry.

The next statute in point of time was 26 Geo. III., c. 86 (1786), the preamble of which contains these words:—"Whereas it is of the utmost consequence and importance to the general welfare of this Kingdom to promote the increase of the Number of Ships and Vessels, and to prevent any discouragement to Merchants and others from being interested and concerned therein," extends the principle of Limitation of Liability to value of ships and freight, to cases of robbery by persons other than the crew, and gives, sec. 2, an absolute immunity in cases of loss by fire.

The next was 53 Geo. III., c. 159 (1813), which expressly extended the Limitation of Liability to the consequences of "any act, neglect, matter or thing done, omitted or occasioned without the fault or privity" of the owner, "who may happen to carry goods, wares, merchandise or other things laden or put on board the same ship or vessel, or . . . . may happen to any other ship or vessel, or to

any goods, wares, merchandise or other things being in or cn board of any other ship or vessel," and therefore clears up any doubts as to loss or damage by collision (pace *Potts* v. *Pollock & Co.*, 15, S. 579 Sc.); and also, sec. 5, expressly excludes the owners of lighters and river craft from the benefit of the statutes, which had already been done by the Courts in interpreting the previous statutes (*Hunter and Co.* v. *McGowen and Others*, 1 Bligh, 573).*

6 Geo. IV., c. 125, ss. 53, 54, relieves an owner from all liability for loss sustained in consequence of no pilot being obtainable, and limits the liability to the value of ship where his services could have been obtained but were refused by the master.

The Merchant Shipping Repeal Act, 1854 (17 & 18 Vict., c. 120), repealed all the enactments limiting Liability; the earlier ones (7 Geo. II., c. 15; 26 Geo III., c. 86, and 53 Geo. III., c. 159), by sec. 14, from the 11th August, 1854; and the last (6 Geo. IV., c. 125), by the joint operation of Sc. I., and ss. 3 & 4 and of the Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), sec. 3, from 1st May, 1855; and from the earlier of these dates brought into immediate operation the new Regulation as to Limitation of Liability, already enacted by the Merchant Shipping Act, 1854, Part IX.

As the avowed object of the earlier statutes was to encourage British Shipping, it is not unnatural that these benefits should have been confined to British ships. But notwithstanding the change of policy in the country, the

* Apart from the general question of Limitation of Liability, it may be a matter of doubt whether any limitation should apply in cases of loss of life, more especially in river passenger steamers. It is difficult to distinguish on principle the case of a passenger vessel carrying 600 human beings from Gravesend to Woolwich by water and a railway train doing the same thing on the immediately adjacent shore. Yet the owners of the former, perhaps a vessel of 200 tons, would not be liable for more than £3,000 in the aggregate; the latter might well find their liability amount to £30,000, or even to £300,000.

Courts of Law held that the benefits of the enactments of 1854 also were so confined. That is, (1) that the Act had no application in a case of collision between foreign vessels on the high seas, though tried in this country (*Cope* v. *Doherty*, 4 Kay & John., 367); (2) that in case of a collision between a British and Foreign vessel within the three miles limit of the coast of England, the Act applied to the British ship (*General Iron Screw Collier Co.* v. *Schurmann*, 1 John. & H., 180); and (3) that in one between a British and Foreign ship on the high seas it did not apply to the foreigner (*The Wild Ranger*, Lushington, 553). It remained undecided whether, under that Act, a British shipowner could limit his liability for a collision with a foreigner on the high seas outside the 3-mile limit, though it is true a strong opinion to the contrary was expressed by Lord Hatherly (then Vice-Chancellor Wood) in the cases of *Cope* v. *Doherty* and *G. S. Collier Co.* v. *Schurmann*.

By sec. 503 of the statute now under consideration, the owner was free from all liability for loss by fire, and also from all liability for loss by robbery, &c., of "gold, silver, diamonds, watches, jewels, or precious stones" the "true nature and value of which" was not declared.

By sec. 504, his liability was limited to the value of ship and freight for any loss or damage to person or property on board the ship itself or any other ship, with the proviso that such value was to be reckoned at not less than £15 per registered ton, in case of loss of life or personal injury to a passenger. In all cases, to entitle the shipowner to the Limitation of Liability it was necessary that he should be free from personal blame in the matter.

Under this statute, as under all the previous ones, the value of the ship was to be ascertained at the moment *anterior* to the collision (*Brown* v. *Wilkinson*, 15 M. and W., 391). The Law was again altered in 1862, by the Merchant Shipping Act Amendment Act (25 and 26 Vict., c. 63), which

repeals sec. 504 of the Merchant Shipping Act, 1854, and enacts in its place sec. 54, which, probably on account of the apparent want of equity in the different treatment of British and Foreign ships under the former statutes, applied to "the owners of any ship whether British or Foreign," instead of to "any sea-going ship," which had been held not to cover a foreign sea-going ship, out of British jurisdiction at all events, and made the limit of liability, £8 per registered ton of the injuring ship so far as property was concerned, and £15 per ton in case of personal injury or loss of life.

Notwithstanding the fact that this last amendment of the law was made in the interest of foreigners, its incidence on foreigners has been bitterly complained of as an infringement of the International principle of reciprocity (see correspondence on the case of the *Amelia* and *Marie de Brabant* [Browning and Lush., 151, 311] in Wendt on Maritime Legislation, pp. 23—40, and also on more general grounds (La Responsabilité des Propriétaires de Navires. Courcy, Paris), though if the principle of limitation is admitted at all as a function of the ship doing the damage, it certainly would appear more equitable to all parties that this should be at a fixed value, and not dependent on the further question of what was the value of the internal fittings of the injuring ship, or the depreciation in value caused by her own self-inflicted damage.

Since 1862, the Statute Law has remained, as already observed, unaltered on the subject, but a very noticeable change is rapidly being effected in its operation in consequence of shipowners bringing themselves under the operation of the Companies Acts, and incorporating themselves as a limited company for the ownership of each particular ship, and also from the operationof the Law of Mortgage.

To treat of the first method. It is believed that it was

inaugurated as a result of a case of damage in which a vessel, in the act of being launched, the *Andalusian*, ran into and damaged a vessel called the *Angerona*, as the latter was in tow in the River Mersey. The action was tried on July 7th, 1877, when the *Andalusian* was found alone to blame 2 P.D. 231), and subsequently on July 30th, 1878, the Court of Admiralty decided that the owner of the *Andalusian* was not entitled to limit his liability for the collision to £8 per ton, or at all, because the *Andalusian* was at the time of the damage being done not yet registered, and therefore not such a ship as, having regard to various provisions in the Merchant Shipping Acts (17 & 18 Vict. c. 104, ss. 219, 106, 516; and 26 & 24 Vict., c. 63, s. 54), came within the limitation section (3 P.D. 182).

The launch at the time was a mere shell, without machinery or fittings, and probably not worth more, in fact, than £8 per ton, whereas the damage done to the *Angerona* and her cargo much exceeded the amount of the value of the *Andalusian* (nearly £14,000) calculated at that rate.

Soon afterwards, and probably to avoid such a catastrophe for the future, the ships up to that time owned by the owners of the *Andalusian*, appeared as each owned by a separate limited company.

Probably the advantages of this system to the shipowner will be best seen by an example: There are two ships of similar value on the stocks, each say 1,000 tons register, and worth £20,000. The one (A.) is bought by 8 gentlemen who register themselves as a Limited Company under the title of the S. S. A. Co., Limited, capital £20,000 in shares of £10 each, of which each member holds 250; the other, the (B.) is bought by 8 other gentlemen in equal shares, who are each the registered owner of ⅛ or $\frac{8}{64}$th shares in the ship.

Each ship loads a cargo worth, say again £20,000, and unfortunately in the course of their respective voyages, the

A. and the B. collide, and both are damaged, or both are lost.

In the latter and simpler case, all the people concerned being English, cross actions in *personam* are entered and tried.

If A. is found to blame, she will be liable to pay, at all events, £8,000, to be divided between the owners of B. and her cargo, but the company has no assets—the ship its only property being at the bottom of the sea—and is wound up, and the successful parties in the action get nothing at all.

If, on the other hand, B. is found to blame, each of the owners is held individually liable for his share of the £8,000, or £1,000 a-piece, the whole £8,000 to be divided rateably between the S. S. A. Co., Limited, and her cargo, not, it is true, a full compensation, but yet a great mitigation of their loss. The same thing is true if the vessels are only damaged, not lost.

The S. S. A. Co., Limited, will, in all cases, hold a special meeting after the judgment, if they are free from blame, to divide the spoil; if they are held to blame, to consider whether their ship unrepaired is worth more or less than £8 per ton, and if the latter, to decide to wind up the company. I have only considered here the question of liability for tort; when we consider also the liability on contract, as carriers of cargo, the effect of the new method of limiting such liability becomes even more apparent.

In fact, the law suit between the owners of the two ships, or between shipowner and shipper, become perfect instances of "Heads, I win; Tails, you lose," so far as the Limited Co. is concerned.

There is nothing to prevent the company being composed in any given proportions; for example, in the above instance the original owner may own 1,993 of the 2,000 shares, and the master of the ship one share, the others being distributed

amongst the clerks of the principal owner, and in like manner he may own any number of ships, for if the captains are different in each, the companies are never the same, nor is the property of any one liable for the losses of any other one, nor that of any individual member of any or all of the companies for the loss of any of the ships beyond his share in that ship, and thus each member of the company gets the advantage either of our own law of Limited Liability or of that in force in other countries, as suits him best. How far this is politic—there can be no doubt of its legality at present—may be a question for the Legislature. I have only treated the case of loss of *property*, where *life* is concerned it is even stronger.

When nearly 600 persons perished in the *Princess Alice*, it was hard enough for their relatives, that because that ship was only about 200 tons burthen there should only be £3,000 to divide amongst them, an average of £5 to the relatives of each: but if she had been owned by a Limited Company constituted *ad hoc*, the vessel being sunk and destroyed they would have lost even that small sum.

The second method is one founded entirely on the Law of Mortgage as applied to shipping, and is principally practised in the fishing trade, though by no means confined to it. It arises from a laudable desire to induce the master and even the crew to co-operate with the real owner in making the business profitable, and therefore instead of paying weekly or monthly wages, the obvious tendency of which in the fishing trade would be to keep the vessels at sea, but not to catch fish; or paying by shares, in which case there is a temptation for the crew to take the lion's share and barter it with those pests of the trade, the coopers of the North Sea (see Report of the Fisheries Committee, 1883), the owner executes a Bill of Sale of the vessel and her appurtenances to a skipper whom he can trust, but at the

same time takes a mortgage on the vessel for nearly, if not quite, all of the purchase-money. The accounts of each vessel are of course kept separately by the mortgagee, to whom, and to whom alone the catch of fish is consigned; the mortgagee makes his money by the resale of the fish and by the interest on his money lent, and secured by the mortgage and which is by no means excessive, less indeed than would be required by any other lender who did not want to deal in the fish, and who of course would not lend anything like the whole value of the vessel on such security. Now, if one of these vessels so owned and mortgaged comes into collision, if she is not to blame she naturally recovers her loss, but in the event of her being found to blame, and being at the same time much damaged or sunk, the opposing party who can only bring his action against the *res* or the owner finds that the reputed owner is a man of no property and not worth powder and shot, and that the *res* is far from being of the value of £8 per ton, and *he* has no remedy against the mortgagee, for the relation of master and servant does not exist between him and the skipper of the craft, whilst the mortgagee, having an insurable interest in the vessel, does not necessarily lose anything.

It is only marvellous in this condition of things that a Limited Liability Company has not long ago been started to combine these two methods, as a "Marine Provident Loan and Mortgage Co., Limited," to lend money to officers to enable them in process of time to become owners, and also to single ship companies, which would thus still further limit their liability by the amount of their loan capital. By doing this on a considerable scale they would, like the existing large steamship companies, become their own insurers, and in the event of damage by collision, if they won, would get the money; and if the ships mortgaged to them were to blame would not have to pay anything if the ship were lost, or more than her value,

or £8 per ton, whichever was least, if she were not lost, but only damaged.*

What has been hitherto said applies of course only if the action is brought in any English Court. But in conclusion we may well glance at the existing law of Maritime Liability abroad. Generally, that is, in all countries which have adopted either intact, or in a more or less modified form, the "Code Napoléon,"† which, on this point, except that it is worded in the present instead of the future tense follows the "Ordonnance de la Marine;"‡ or in those which have derived their legislature on this point from more ancient codes; § though the master is primarily liable both on his contracts and for his acts, yet there is also a remedy against the owners either directly or indirectly through the ship; in either case, however, the remedy comes to the same thing in the end, as the owner can limit its extent to the value of the ship and freight by abandoning them to the claimant.

It will be easily seen that if the ship be herself in good condition, and worth more than £8 per ton, the limitation is

* It might be expedient for ships so owned to fly a particular flag or carry a special light, both to enable all other ships to get out of the way, and also to enable them to avoid running down one another.

† When the Code was under discussion in the commencement of the present century, this point of Liability was much discussed, four positions being taken up in regard to it:—

(1.) That the owner should be liable *in toto*;

(2.) That he should only be liable to the value of his property engaged in maritime affairs, *i.e.*, to the whole of his shipping;

(3.) To the value of the ship;

(4.) Not at all for things done without his actual fault or privity.

In the result, (3) was decided on as being in accord with a practice then, at all events, well recognised and not inconsistent with natural equity.

‡ These are France (Art. 216), Belgium (Liv. II., Tit. II., Ch. I., Art. 7), and, I believe, Greece, Italy (Art. 311), and Egypt (Art. 30).

§ Spain (Arts. 621, 622), and Portugal (No. 1,339), Holland (Art. 321), Germany (Arts. 451-452), Sweden (A.D. 1864, Art. 49), Norway (A.D. 1860, Arts. 15, 65, 79).

not so satisfactory for the shipowners as the English law, whilst if the ship is lost, or so damaged as to be worth less than £8 per ton, it is more to his advantage; but it has been shown that by the provisions of the existing English law the shipowner in England can avail himself of that method of limitation which is most to his own advantage.

Practically, in the case of foreign ships in English ports, their owners are always in the position of the English Single Ship Companies, as if the foreign vessel is worth more than £8 per ton, the vessel claims the English Law, and if less, by not appearing or leaving the ship under arrest and not giving bail, the execution of the judgment is limited to the amount realized by the sale of the ship, if the owner have no other property in this country available, though questions might arise if another ship belonging to the same owner was subsequently found in England at the same time that the owner happened to be here.

In the United States the same law prevails as on the Continent of Europe under the Code Napoléon, under an Act of Congress, passed in 1851 (see *Dyer* v. *National Steam Ship Company*, 39 L.T. Rep., N.S. 61). And therefore the limitation to the value of the ship and freight may be considered as universal, except in England and her dependencies, where though nominally it is always £8 per ton for loss of goods, and £15 per ton where personal injuries are caused, it may be reduced, as we have seen, to a sum bearing these latter measures of liability as a maximum, and as a minimum the actual value of the ship after the collision.

If the principle of limitation at all is admitted, there can be little doubt that the more nearly it can be fixed the better, and for that end, so far as the injured person is concerned, the arbitrary limit of our Merchant Shipping Act is better than one depending on a fluctuating quantity such as the value of the ship doing the injury, but we have

seen that by the influence of the Law of Companies with Limited Liability, and of Mortgage, the Law of Limitation of Liability of Shipowners as amended in 1862, in the interest of the injured party, is capable of being turned to the interest of the injuring party.

And it is surely a matter well worthy of consideration, whether it is worth while to maintain an isolated system so extremely capable of abuse.

The present writer some time ago advocated an International agreement upon the subject by which a minimum value should be put on the ship, but the rapid spread of the Single Ship Companies since has shown that in this country such a system would be illusory without special legislation, making the Shareholders in such Companies liable as in the case of Shareholders in Banks for something beyond the actual value of their invested property, and in default of such arrangement it would certainly seem more equitable that this country should return to her former practice, and to the universal practice of all other nations at the present time.

The whole subject, however, seeing the immense importance and value of ships and their cargoes is one well worthy the notice of an International Conference. We have already settled the rules of Navigation on an International basis; Great Britain, as is her natural right, taking the lead, it is even more important that the consequence of a breach of those regulations should also be settled on a like broad basis, and not that in some countries, as in Holland and Germany, Portugal, Spain, Denmark, in cases where both captains are to blame, each owner should stand by his own loss, so far as regards the ship, whilst in some of these, as in Germany (Journal de Droit International Privé, Vol. II., p. 360), the cargo laden on board either has a remedy against each up to the value of the ship and in others only against the carrying ship. Whilst in the

same case of "both to blame," in France, Belgium, Italy, Greece, Norway, and in some cases Sweden, each pays in proportion to the amount of blame, and again, in England and the United States each pays half the joint loss, and in Egypt under its brand new Code each pays in proportion to its own value.

And again, it is strange that in Belgium an owner should remain answerable for the fault of a pilot employed by compulsion of law, whilst in the United States he is liable only when he had a choice of one out of more pilots, the employment of one or other of whom was compulsory, in England and Germany he should in the like case be excused, and in Portugal whilst the ship is liable for the fault of such a pilot the owner can recover his loss from the Pilotage Board.

Space would fail to go into the varieties of the law of the different Maritime States on these most vital points. It may, however, safely be said that the laws of no two of them are identical, and surely if the object of all laws of Limitation of Liability of Shipowners be, as alleged, to encourage citizens to invest their capital in that which is at once the wealth and strength of a nation, it is even more important that the cases in which they are liable should be settled on one uniform basis, than that the amount for which they are liable should be limited at all. And, if limited, it should be to the same extent all the world over rather than by an arbitrary law in one state, while any limitation at all depends on different formal acts of abandonment in others, and is the direct result of law in yet another group.

An adaptation of the Roman Law, designed indeed for a very different state of civilization, but as usual with the laws of that marvellous nation applicable in principle to all peoples, nations, and languages, could give no offence to the natural susceptibilities of any, and would do much to

promote the civilization and prosperity of all, and removing constant causes of irritation, tend in no small degree to bring about that Universal Peace by natural means which the compilers of those Laws could only accomplish by the sword.

F. W. Raikes.

The actual texts of the several more typical Codes are as follows:—

"(1.) *France. Code of Commerce.*—Art. 216. Tout propriétaire de navire est civilement responsable des faits du capitaine, et tenu des engagements contractés par ce dernier, pour ce qui est relatif au navire et à l'expédition.

"Il peut, dans tous les cas, s'affranchir des obligations ci-dessus par l'abandon du navire et du fret." See also Art. 435.

"(2.) *Italy. Codice di Commercio.*—Art. 311. I proprietari de'navi sono responsabili dei fatti del capitano e tenuti per le obbligazioni contratte da questo per ciò che concerne la nave e la spedizione; possono in tutti i casi liberarsi dalla responsabilità e dalle obbligazioni mediante l'abbandono della nave e del nolo."

(3.) *Portugal. Codigo Commercial.*—Part II., Liv. unic. Tit. III.—Art. IV. (No. 1339.)—Todo o proprietario de navios é civilmente responsavel pelos factos do capitão ou mestre, em quanto relativos ao navio e sua expidição.

Cesso em todo o caso a responsabilidade do dono pelo abandono do navio e do frete ganho ou a vencer."

Tit. VIII., Art. LVIII., No. 1497, is similar to Art. 452 of the Dutch Commercial Code. An English translation of it will be found below, except that it contains no reference to the Civil Code of Portugal, Art. 2380 (Part IV.,

Liv. I., Tit. II., Cap. V.) of which corresponds to Art. 1403 of the Dutch Code.

"(4.) *Holland.—English Translation; Edited by the Department of Foreign Affairs at the Hague*, 1880.—*Commercial Code.* Art. 321. The owner of a ship or the part owner, each in proportion to his share, are responsible for the acts and engagements of the master in whatever is relative to the ship and the venture.

"This responsibility ceases by the abandonment of the ship, and of the freight earned and yet to be earned by it for the venture to which the acts and engagements are relative.

* * * * *

"Each part owner is released from his responsibility by a like abandonment of his share."

"Art. 452. The ship's officers and crew bind by their neglect or misconduct committed in the service, the ship and freight in behalf of the owners of the cargo, who sustain damage thereby, saving the shipowner's claim for redress on the master, and his recourse on the crew; all in conformity with what is stipulated in the last paragraph of the 1403rd Article of the Civil Code.

"The wages and hire of the master, officers and crew are especially liable for such recovery." * * * *

"Article 1403 of the Civil Code. A person is not only answerable for the damage caused by his own acts, but also for that caused by the acts of persons for whom he is accountable, or by things which he has under his care.

* * * * *

"The master and those who appoint others to the management of their affairs are answerable for the damage caused by their servants and subordinates, in the business in which they employ them. * * * *

"Employers are answerable for the damage caused by their servants while under their superintendence. The above

responsibility ceases when the employers prove that they were unable to prevent the act for which they would be accountable."

"*Spain.*—Art. 621. El naviero es responsable de las deudas y obligaciones que contrae el capitan de su nave para repararla, habilitarla y aprovisionarla, y no elude la responsabilidad, alegando que el capitan se excedió ó quebrantó sus órdenes é instrucciones, siempre que el acreedor justifique que la cantidad que reclama se invertió en beneficio de la nave.

"Art. 622. Tambien responde el naviero de las indemnizaciones en favor de tercero, por la conducta del capitan en la custodia de los efectos que cargó, pero podrá eximirse abandonando la nave, con todas sus pertenencias, y los fletes devengados en el viaje."

Norway.—Law of Navigation of 24th March, 1860. English Translation. Published by A. Grondahl, of Kristiania. (1875.)

"Art. 43. For claims of indemnity against a master arising out of contracts of affreightment, the interested party has a lien upon the vessel." (See also Art. 65, a similar provision in case of damage to cargo.)

"Art. 79. For damages, for which, according to the preceding article* the master and crew are responsible, there is a lien on this in the ship in the same manner as, according to the provisions of Art. 101 for bottomry; if, however, the party who has sustained the loss, intends to make the ship responsible, he must bring the claim before the Court within six months after he knows by whom the accident was occasioned."

Germany.—Commercial Code. Translation extracted from Wendt's *Maritime Legislation.* 2nd Ed., 1871, p. 198.

"Art. 451. The owner is answerable for any damage occasioned to a third party by any of the crew in the performance of their duties.

* The preceding Article 78, deals with damage caused by collision.

"Art. 452. The owner is, however, not personally liable for the claim of a third party, but is only answerable to the extent of ship and freight.

"(1.) When the claim is made on account of a legal transaction, concluded by the master as such, in virtue of the authority he lawfully possesses, and not in consequence of an especial power of attorney.

"(2.) When the claim is occasioned by the non-performance, or the incomplete or improper performance, of any arrangement made by the owner, as far as the carrying out of such arrangement belonged to the legitimate duties of the master, no matter whether the non-performance or the incomplete and improper performance was caused through the fault of anybody belonging to the crew or not.

"(3.) When the claim has arisen through the fault of one of the crew.

"This section does not however apply to the cases stated under Nos. (1) and (2) if any negligence in performance of the arrangement is attributable to the fault of the owner himself, or if he has especially guaranteed the fulfilment of the arrangement."

United States. Act of Congress, 1851, Sec. 3. "And be it further enacted, that this liability of the owner or owners of any ship or vessel, for any embezzlement, loss, or destruction by the masters, officers, mariners, passengers, or any other person or persons of any property, goods, or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner or owners respectively, in such ship or vessel, and her freight then pending.

"Sec. 4. And be it further enacted, that if any such embezzlement, loss, or destruction, shall be suffered by several

freighters or owners of goods, wares, or merchandise, or any property whatever, on the same voyage, and the whole value of the ship or vessel, and her freight for the voyage, shall not be sufficient to make compensation to each of them, they shall receive compensation from the owner or owners of the ship or vessel, in proportion to their respective losses; and for that purpose the said freighters and owners of the property, and the owner or owners of the ship or vessel, or any of them, may take the appropriate proceedings in any Court, for the purpose of apportioning the sum for which the owner or owners of the ship or vessel may be liable amongst the parties entitled thereto. And it shall be deemed a sufficient compliance with the requirements of this Act, on the part of such owner or owners, if he or they shall transfer his or their interest in such vessel and freight, for the benefit of such claimants (to a trustee) to be appointed by any court of competent Jurisdiction, to act as such trustee for the person or persons who may prove to be legally entitled thereto, from and after which transfer all claims and proceedings against the owner or owners shall cease."

British Possessions.—West Indies, St. Lucia.—As a further illustration of the diversity of law on the subject, it is curious to note that in a Code promulgated in the British West Indian Island of St. Lucia, in 1876, the following law is laid down, which it will be observed is similar to that in force in Great Britain under the Merchant Shipping Act, 1854, until altered by the Amendment Act in 1862:—

Bk. III., Chap. V., Sec. 2270. "When any damage or loss is caused to anything on board a sea-going ship, without the fault or privity of the owner, he is not answerable in damages to an extent beyond the value of the ship, and the freight due, or to grow due, during the voyage; provided that such value shall not be taken to be less than £15 sterling per

registered ton, and that the owner shall be liable for every such loss and damage arising on distinct occasions to the same extent as if no other loss or damage had arisen.

"Sec. 2271. The freight mentioned in the last preceding article is, for the purposes thereof, deemed to include the value of the carriage of any goods belonging to the owners of the ship, passage money, and the hire due, or to grow due, under any contract; except only such hire, in the case of a ship hired for time as may not begin to be earned until the expiration of six months after the loss or damage."*

F. W. R.

II.—THE COURTS AND THE LAW OF PARTNERSHIP.

IT is a well-known rule that when real property is held for the use of a commercial partnership, if there is an agreement that upon the dissolution of the partnership (either by the express act of all, or by the death of one of the partners) the property shall be sold, the agreement will be held in equity to convert real property into personalty as between the heirs and the personal representatives, so that in such case, whether the property be legally vested in one partner alone, or in several as joint tenants or tenants in common, it will belong beneficially to the next-of-kin of the several partners, the heirs thus losing their inheritance and the widows their dower†. This principle is so firmly settled

* Should a collision unfortunately take place in Santa Lucian waters, and be brought on appeal to the Privy Council, the validity of this enactment may not improbably be questioned, seeing that the Merchant Shipping Act, pt. ix., s. 502, applies "to the whole of Her Majesty's dominions," under which denomination Santa Lucia comes in, notwithstanding the virtue of s. 2 of the same Act.

† *Per* Thurlow, C., in *Thornton* (or *Thompson*) v. *Dixon*, 3 Bro. C.C. [199], [200] (1791); *Ripley* v. *Waterworth*, 7 Ves. [425] (Eldon, C., 1802).

that, even if there be no general agreement as to sale, but only a stipulation that the share of a deceased partner may be purchased by the surviving partner or partners, the property becomes converted as regards the estate of the deceased, so that the land itself or the purchase-money will go to his personal representatives and not to his heir*. But it was formerly held that when there was no such agreement or stipulation, the property would follow its natural course and descend to the heir; and it is to the gradual drifting of the Courts from this to the opposite doctrine that I propose in the following pages to call attention. I shall begin by giving some account of the actual decisions from the days of Lord Thurlow down to the present time.

In the earlier of the cases already referred to, part of the real property was vested in three out of seven partners as tenants in common, they covenanting to stand seised thereof in trust for the co-partnership, with a power that any partner might dispose of his share, giving notice to the others so that they might have an opportunity of purchasing, and other part was bought by the partners and held by them in joint tenancy. The Court, after first expressing its opinion that the property was converted, allowed the question to be argued again, and decided that it was not converted, because the agreement did not contain any stipulation that it should be valued and sold†.

On the same principle, where partners purchased land which was paid for partly out of partnership funds, and partly out of monies borrowed from one of the partners and secured by mortgage of the same land for a term of years, although there was some doubt whether the land really belonged to the partnership, it was distinctly decided, on the authority of the last-mentioned case, that, even if it

* *Ripley* v. *Waterworth*, *ubi suprà.*

† *Thornton* v. *Dixon*, *ubi suprà.*

did, it was not converted, and the share of a partner dying must go to his heir, subject to the dower of his widow*.

In a subsequent case, decided by the same Judge as the case last mentioned, *Thornton* v. *Dixon* was referred to, and its principle, as regards the right of the heir, was expressly recognised by the Court, and the question was considered to be one not even admitting of argument†.

Similarly, where three brothers and one sister became entitled as tenants in common, on the death of their father, to certain real property, and two of the brothers carried on a farming business on this family estate, and a manufacture of biscuits partly on it and partly on the separate property of one of them, each carrying on a separate business at the same time, and the same two brothers purchased various other lands (part of them being the share of another brother in the family estate), paid for them out of partnership monies, and used them for farming and agricultural purposes, and afterwards purchased other real property which they did not use for partnership purposes, but let out to tenants, it was held, on the death of one of these two brothers, that none of the property was converted, and that the whole of the deceased brother's share of the purchased property must go as real estate‡.

And, in a case where there was no purchase of the real property for partnership purposes, but the whole originally belonged to a father, who took his son into partnership, conveying $\frac{6}{32}$ of certain real property to him, and agreeing by deed that the whole should be held as partnership property, and considered and treated as part of the joint stock of the partnership tenure, and afterwards conveyed other $\frac{3}{32}$ in a similar manner, it was held, on the father

* *Bell* v. *Phyn*, 7 Ves. [453], (Grant, M. R., 1802).

† *Balmain* v. *Shore*, 9 Ves. 500 (Grant, M. R., 1804).

‡ *Randall* v. *Randall*, 7 Sim., 271 (Shadwell, V. C. of E., 1835).

dying intestate, that the remaining $\frac{2}{3}\frac{3}{2}$ descended to his eldest son (who was not the son in partnership with him) as his heir. The Court, in this case, relied on the decision in *Bell* v. *Payn*, and on the circumstances that there was no purchase with partnership monies, that there were no stipulations which, on a fair contention, could be said to have the effect, as between the real and personal representatives, of converting the real estate into personalty, and that it was not necessary for any partnership purpose that there should be any conversion*.

The next case which will be mentioned formed the thin end of the wedge which was to split asunder the once solid rock of settled doctrine.

Where six persons took a lease of mines and another lease of the surface, and worked the mines and occupied the surface lands as a joint and partnership concern, it was declared by the Court (the contention on the other side being that mines "were of the nature of real property," and, therefore, that the common principles of partnership did not apply to them), that all property acquired for the purpose of a trading concern, whether it be of a personal or real nature, is to be considered as partnership property, and is to be first applied accordingly in satisfaction of the demands of the partnership†.

It will readily be seen that this case is not really a decision on the point; for, in the first place, the question was not between the heir and the personal representatives, but between the personal representatives and the partnership, secondly, the property was personalty, so that the words of the Court were merely *obiter dicta* so far as real property was concerned. But an irrelevant decision too often

* *Cookson* v. *Cookson*, 8 Sim., 529 (Shadwell, V. C. of E., 1837). In this case there had been originally a stipulation for right of purchase, but it was held to be no longer in force.

† *Fereday* v. *Wightwick* 1 Russ. & My., 45 (Leach, M. R., 1829).

causes the fickle wind of legal doctrine to shift its quarter; and this case derives an adventitious importance from the reference made to it in the following case decided by the same Judge:—

Where two persons carried on a partnership without any written articles, and, in the course of their business, purchased with partnership monies certain real property which was conveyed and surrendered to the partners and their heirs, it was decided, on the authority of certain alleged *dicta* of Lord Eldon (not specifically cited or referred to) and of the doubtful case of *Townsend* v. *Devaynes**, that all property purchased with partnership capital for the purposes of the partnership trade continues to be the partnership capital, "and to have, to every intent, the quality of "personal estate;" and the Judge stated that, in his own previous decision of *Fereday* v. *Wightwick*, he had no intention to confine the principle to the payment of partnership demands†.

On the authority of this decision, it was decided by the same Judge, in a case in which real property had been purchased by partners out of partnership capital and for partnership purposes (no other material particulars are given), that, on the death of one of the partners, his infant heir was a trustee for his administratrix‡.

In a case in which a partnership was possessed of real property, some parts held by the partners as tenants in common and other parts by one or more partners in trust for the partnership, it was held, on the death of one of the partners, that the property of the partnership "ought to "be considered of the nature of personal estate;" but, as the Court went on to decide that the heir of the deceased partner "was a trustee on behalf of the partnership,"

* This case, which is not reported, will be mentioned later.

† *Phillips* v. *Phillips*, 1 My. & K., 649 (Leach, M. R., 1832).

‡ *Broom* v. *Broom*, 3 My. & K., 443 (Leach, M. R., 1834).

there was no decision as between the equitable claims of the heir and the personal representatives*.

In a case in which the facts were much disputed, but the Court came to the conclusion that real property had been purchased by two brothers with borrowed money, and that, on the evidence, it was plain that they had treated it as partnership property, the Court, while admitting that the case did not stand upon the proposition stated by the Court in *Phillips* v. *Phillips*, considered the property to belong to the personal representatives and not to the heir†. It is unfortunate that the Judge, in this case, gave no reasons for departing from the principle laid down in the earlier cases, including his own decisions in *Randall* v. *Randall* and *Cookson* v. *Cookson;* but it seems possible that he may, in his own mind, have distinguished *Houghton* v. *Houghton* from the latter as being a case in which all the real property was purchased with partnership funds.

Where two brothers, being seised of certain real property, entered into a partnership in a business to be carried on, partly upon the property in question, for a fixed period of fourteen years, the partnership-deed containing a stipulation that in case of the death of either of them the partnership should cease and the survivor should purchase the share of the deceased in the real property, and after the expiration of the fourteen years the business continued to be carried on in partnership upon the same premises without a fresh deed, it was held, on the death of one of the partners, that his share was personal estate.‡ It must be observed, however, that the Court held and decided that the continuing partnership was "varied only as to the "term of its duration," and that all the other stipulations

* Statement of previous order of the Court, in *Morris* v. *Kearsley*, 2 Y. & C., Exch. 139 (1837).

† *Houghton* v. *Houghton*, 11 Sim., 491 (Shadwell, V. C. of E., 1841).

‡ *Essex* v. *Essex*, 20 Bea., 442 (Romilly, M. R., 1855).

continued to exist, so that the stipulation as to purchase by the survivor brought the case within the rules derived from *Thornton* v. *Dixon* and *Ripley* v. *Waterworth*.

In a case in which two brothers embarked, apparently without articles, in a joint speculation or business which consisted in purchasing real estates (for which they jointly paid or made themselves liable) and converting them into building sites and re-selling them at a profit, it was held, when one of them died, that his share of the unrealised real estate went to his personal representatives*. The Court, in this case, summed up the results of the previous decisions, and its views may be considered to be expressed in the following words extracted from the judgment:— "The result, then, of the authorities may be thus stated:— "Lord Thurlow was of opinion that a *special contract* † was "necessary in order to convert the land into personalty; "and Sir William Grant followed that decision. Lord "Eldon on more than one occasion strongly expressed his "opinion that Lord Thurlow's decision was wrong. Sir J. "Leach decided in three cases that there was conversion "out and out; and Sir Lancelot Shadwell, in the last "case before him, clearly decided in the same way. "That is the state of the authorities"‡. And, as to the reason of the doctrine, the Court held it to be a clear principle that, by an implied contract, "on the dissolution "of a partnership, all the property belonging to the "partnership shall be sold, and the proceeds of the "sale, after discharging all the partnership debts and "liabilities, shall be divided among the partners, according "to their respective shares in the capital. That," the Court continued, "is the general rule; it requires no special "stipulation; it is inherent in the very contract of partner-

* *Darby* v. *Darby*, 3 Drew. 495 (Kindersley, V. C., 1856).

† The context shows that a contract that the property shall be sold is here meant.

‡ S. C., 503.

"ship"*. And therefore it appeared to the Court "that "irrespective of authority, and looking at the matter with "reference to principles well established in this Court, if "partners purchase land merely for the purpose of their "trade and pay for it out of the partnership property, that "transaction makes the property personalty, and effects a "conversion out and out"†.

It must be remarked that this case, as regards the facts, is distinguishable, as the Court itself pointed out, by the circumstance that the land was not merely partnership property, but was part of the very subject-matter of the business, the very property which the partners agreed to trade in; and, more than this, that as the business was to consist partly in sales of this land, there was, by implication at least, an agreement for conversion in the inception, so that the case was brought virtually within the principle of *Ripley* v. *Waterworth*. Apart from the reporter's statement, this was clearly brought out at the conclusion of the judgment, where the Court said, "We have here what Lord "Thurlow wanted in *Thornton* v. *Dixon*, an actual contract "that the land shall be sold"‡. Under these circumstances, the other passages above cited amount to little, if anything, more than *obiter dicta*.

But in a later case, decided by the same Judge, of which the particular features have no special importance, the opinions expressed in *Darby* v. *Darby* were reiterated; the Judge declaring his continued adherence to the views stated in that case, apart from the special feature first mentioned. And he further explained the principle of his view by comparing the case of a partnership with that of a devise of land to trustees to sell and divide the money between A., B. and C., adding, that land so devised was

* *Ibid.*

† *Ibid*; *v.* also, "I can have . . . . personal estate," 506.

‡ S. C., 507.

considered to be personalty if one of the cestuis-que-trust died, though the parties might, if they thought fit, agree to keep it unsold*.

Lastly, where three brothers carried on business as nurserymen on real property partly belonging to them as tenants in common under their father's will, and partly being property which their father had contracted to purchase, and which they had purchased in pursuance of such contract and had had conveyed to them as tenants in common, and two of the brothers afterwards purchased the share of the third both in the business and in the property in question, and continued to carry on the business as before, it was held, on the death of one of the two, that his share of all the real property, &c., employed for the purposes of the partnership (including that purchased from the third), belonged to his personal representatives and not to his heir. In this case the Judge gave his decision in reliance on Lord Eldon's *dicta* before alluded to, saying, "I am of opinion that this "case is governed by that class of cases in which Lord "Eldon said that where property became involved in "partnership dealings it must be regarded as partnership "property." And he expressed his opinion that it was immaterial how the property was acquired, if, in fact, it was substantially involved in the business†.

It is probable that, as the decisions now stand, the question treated in the cases above described would be considered as conclusively settled, so far as the cases have authority, against the heir and in favour of the personal representatives; but it is certain that it was once firmly settled in favour of the heir, except when there was an agreement for conversion either by sale generally or by sale to surviving

* *Holroyd* v. *Holroyd*, 7 W. R., 426 (Kindersley, V. C., 1859).

† *Waterer* v. *Waterer*, L.R. 15 Eq. 402 (James, L. J., for Wood, V. C., 1873) *v.* also *Myers* v. *Perigal*, 2 D.M. & G., 599; and *Forbes* v. *Steven*, L.R. 10 Eq. 178.

partners. And, when it is considered that the doctrine now discredited was laid down by so eminent a Chancellor as Lord Thurlow, and that the opposite doctrine, which ignores the claim of the heir under all circumstances, has never been subjected to the test of an appeal, it must still be considered possible that the question may come to be argued at a future time. If this should be the case, it will be well to remember a number of circumstances tending to throw doubt on the manner in which the now approved doctrine has become established. In *Fereday* v. *Wightwick**, the point, as we have shown, did not arise at all, though that case has derived a kind of spurious importance from a subsequent observation of the Judge who decided it †; in *Phillips* v. *Phillips*‡, the first decision really against the heir, Sir John Leach based his conclusion merely on certain unspecified *dicta* of Lord Eldon, and on the doubtful case of *Townsend* v. *Devaynes*§. *Broom* v. *Broom* was decided by the same Judge, exclusively on the authority of his own previous decision. *Morris* v. *Kearsley*‖, as we have shown, is not really a decision on the point. Sir Lancelot Shadwell decided *Houghton* v. *Houghton*¶ without giving any reason for rejecting the older decisions (among them his own in *Randall* v. *Randall*** and *Cookson* v. *Cookson*)††, and adopting the view for which, until then, Sir J. Leach alone had been judicially responsible. *Darby* v. *Darby*‡‡, as a decision, was not in point, but we shall have to mention it hereafter with reference to the reasoning employed by Sir R. T. Kindersley. *Essex* v. *Essex*§§, decided by Sir John Romilly, is, as we have shown, irrelevant; *Holroyd* v. *Holroyd*‖‖ is important only as expressing the

* *V. suprà.* † *V. suprà.* ‡ *V. suprà*

§ The *dicta* and case are further alluded to, *infrà.*

‖ *V. suprà.* ¶ *V. suprà.* ** *V. suprà.*

†† *V. suprà.* ‡‡ *V. suprà.* §§ *V. suprà.*

‖‖ *V. suprà.*

continued adherence of Sir R. T. Kindersley to the opinions expressed by him in *Darby* v. *Darby*; and, in *Waterer* v. *Waterer**, Sir W. M. James seems to have relied solely on Lord Eldon's *dicta*.

The future settlement of the question as to the heir's right seems to depend, then, in respect of authority, on the supposed *dicta* of Lord Eldon and the unreported case of *Townsend* v. *Devaynes*† ; and, in respect of principle, on the *à priori* reasoning of Sir R. T. Kindersley in *Darby* v. *Darby*‡.

The *dicta* relied upon, as far as I can ascertain, are contained in *Lyster* v. *Dolland*§, *Stuart* v. *Bute*||, *Kirkpatrick* v. *Sime*¶, *Selkrig* v. *Davies***, and *Crawshay* v. *Maule*††. Let us see how far they go.

In the first of these cases, the *dictum* (which was, in fact, not Lord Eldon's but Lord Thurlow's) was simply to the effect that if land in fee simple is purchased to carry on a joint trade, it will be converted "for the purposes of trade "and making a common advantage," so that the question as between the heir and the personal representatives was not touched.

In *Stuart* v. *Bute*, so far from contravening the heir's right, Lord Eldon distinctly recognized it by saying, "In "cases where persons engaged in partnership have bought "freehold houses, the difficulty of distinguishing and "arranging property of different natures, partly personal, "partly real, has never, except by the effect of the con- "tract or the will, been held sufficient against the heir."

In *Kirkpatrick* v. *Sime*, a Scotch case on appeal before the House of Lords, Lord Eldon, it must be admitted,

* *V. suprà.* † *V. suprà.* ‡ *V. suprà.*
§ 1 Ves. Jun., 431, 434 (Thurlow, C., 1792).
|| 11 Ves. [657], [665] (Eldon, C., 1806).
¶ 5 Pat. Sc. App. 525 (H. of L., 1811).
** 2 Dow, 230, 242 (H. of L., 1814).
†† 1 Swans. 495, 508, 521 (Eldon, C., 1818).

expressed his individual leaning against the doctrine established by *Thornton* v. *Dixon* * and similar cases, but stated that the course of decisions had not run uniformly, and that he could not advise the Court below to adopt that which he himself considered the best principle of law in such a case.

In *Selkrig* v. *Davies*, also a case in the House of Lords on appeal from Scotland, one of the Counsel having stated that "no question arose as to heritage, the shares being "clearly personal property," Lord Eldon said:—"My own "individual opinion is, that all property involved in a "partnership concern ought to be considered personal;" but it is clear that this observation, taken in connection with the words which drew it forth, had not reference to any question between the heir and the personal representatives, but merely meant that, as before stated by Lord Thurlow, in *Lyster* v. *Dolland*†, such property is converted so far as the partnership business is concerned.

In *Crawshay* v. *Maule*, Lord Eldon said:—"It has been "repeatedly decided that interests in lands purchased for "the purpose of carrying on trade, are no more than stock-"in-trade;" but this again had reference, as the circumstances of the case indicate, to the partnership or trading rights, not to any question between the heir and the personal representatives. His Lordship immediately added that he remembered a case in the House of Lords about three years before, that of the Carron Company, in which the question was much discussed, whether, when partners purchase freehold estate for the purposes of trade, on dissolution, that estate must not be considered as personalty with regard to the representatives of a deceased partner; an observation which clearly shows that he did not consider the question to have been concluded in favour of the personal repre-

* *V. suprà.* † *V. suprà.*

sentatives; and further, he expressly recognised the question cf the heir's right as being at least an open one, by saying, "For ordinary purposes a lease is no more than stock-in-"trade, and as part of the stock may be sold; nor would it "be material that the estate purchased by a partnership "was freehold, if intended only as an article of stock, "though a question might in that case arise on the death of "a partner, whether it would pass as real estate, or as "stock, personal in enjoyment, though freehold in nature "and quality."

These, it would appear, are the *dicta* which have been relied upon as showing the opinion of Lord Eldon respecting the doctrine laid down in *Thornton* v. *Dixon**; but I shall venture to draw attention to another case, already mentioned, which does not seem to have been noticed in this particular connection. In *Ripley* v. *Waterworth*†, Lord Eldon, before coming to an actual decision, declared himself to be strongly inclined against the claim of the heir, on the ground that, upon the true construction of the deed of partnership, the parties had contracted that on the determination of the partnership the property should be converted to all intents and purposes; a *dictum* which clearly involves the implication that he would not have considered the claim of the heir to be untenable if the parties had not so contracted.

It seems strange that these *dicta* should have been referred to as being generally, or even in the main, antagonistic to the decision of Lord Thurlow in *Thornton* v. *Dixon*. In two of them, *Lyster* v. *Dolland*, and *Selkrig* v. *Davies*, as we have seen, the question as between the heir and the personal representatives is not at all alluded to; in two, *Stuart* v. *Bute* and *Crawshay* v. *Maule*, the circumstance that the heir may be entitled is expressly admitted‡; in one, *Ripley* v.

* *V. suprà.* † *V. suprà.*

‡ In this respect V. C. Kindersley admitted the apparent force of *Stuart* v. *Bute*, but suggested that Lord Eldon only meant to intimate that whenever the

Waterworth, the same admission is implied by the reason given for the exclusion of the heir in the particular case; in one alone, *Kirkpatrick* v. *Sime*, is any dissatisfaction expressed with the doctrine of Lord Thurlow; and even when delivering this isolated expression of opinion, Lord Eldon, so far from implying, as stated by Sir R. T. Kindersley, that the decision in *Thornton* v. *Dixon* "could "not be supported," distinctly treated it as a decision which he was not at liberty to disregard.

The case of *Townsend* v. *Devaynes*, as we have already mentioned*, is unreported. It appears at first sight, from the description of it given in Montagu's "Notes," to be a decision against the right of the heir to succeed under any circumstances. But it was alleged in evidence in that case that there was an agreement giving an option of purchase to either partner after the death of the other; and, although the Master reported that the document had not been found, and that there was "no binding agreement for a sale," it has since been ascertained by an examination of the record of the case† that the draft articles of the partnership were read by consent. The conclusion is almost irresistible that an agreement for option of purchase was admitted, which would bring the case at once within the principle of *Ripley* v. *Waterworth*‡. Even if this conclusion be disputed, it is certain that *Townsend* v. *Devaynes*, after this discovery, can no longer have any weight as a decision against the

heir was entitled, his title should not be prejudiced by any difficulty that might arise in distinguishing the realty from the personalty. The learned V. C. seems to have failed to observe that the words "whenever the heir was entitled" must constitute in themselves an admission that the heir may, under some circumstances, be entitled, the very proposition which the V. C. was endeavouring to controvert.

* *V. suprà,* † Reg. Lib. 1811, fol. 1248; *v.* 11 Sim., 497.

‡ For the particulars of this case, *v. suprà.* As to the discovery here mentioned, which was made by Mr. Jacob, the well-known Editor of Roper, *v.* 1 Rop. H. and W., 346, note; 11 Sim., 498, note.

heir, and the highest ground that can be taken is that it is a doubtful case, and ought not to be cited in the heir's favour.

The *à priori* reasoning of Sir R. T. Kindersley rests entirely on two propositions, which may be fairly stated thus: the first, that the mere existence of a partnership carries with it an implied agreement that all the property belonging to it, whether real or personal, must, at the dissolution, be sold, and the proceeds, after discharging the partnership debts and liabilities, be divided among the partners according to the amount of their shares; the second, that this principle necessarily involves another, namely, that the existence of the partnership effects an absolute conversion of land for all purposes. The first of these propositions he supports by citing two cases, *Crawshay* v. *Collins** and *Featherstonhaugh* v. *Fenwick*†. But the cases do not prove so much. In neither of them was there, in fact, any real property involved. Apart from this, in *Crawshay* v. *Collins*, the point decided was, that when the business of a partnership, without any articles as to term or continuance, had been carried on for some time by two remaining partners after dissolution by the bankruptcy of a third, the assignees of the bankrupt partner were entitled to claim a share of the profits, and, for the purpose of ascertaining the value of such share, to insist on a sale of the whole capital and stock in trade, part of which consisted of leasehold premises where the trade was carried on. In *Featherstonhaugh* v. *Fenwick*, all the partners in a concern except one offered to take the share of that one, together with his portion of the leasehold premises on which the business was carried on, off his hands at a valuation; and, as he did not agree to this, they carried on the business without him, and his representatives, after his death, were held to be entitled to an account of profits, and (as in the previous case) to a sale. The actual report does not carry the case beyond

* 15 Ves., 218 (Eldon, C., 1808). † 17 Ves., 298 (Grant, M.R., 1810).

this stage; but the Judge expressed his opinion that, in the case of a partnership existing without articles and for an indefinite period, any of the partners may dissolve at pleasure, but if some of them do so, the others are entitled, as against the partners so dissolving, to have the whole concern wound up by a sale and a division of the property. The doctrine established or indicated by these cases falls very far short of that deduced from them by Sir R. T. Kindersley. Omitting minor points open to criticism, a right to call for a sale is very different from an agreement that there shall, in all events, be a sale; and, in the absence of such an agreement, the expression or implication of intention is evidently wanting. The case differs entirely from that of a devise in trust for sale, to which the same Judge, as we have seen, compared it*; for, in the latter case, a sale is imperative unless competent persons forbid it; while, in the former, a sale is not required unless a competent person demands it. Supposing no demand to be made, can it be maintained that the partners are bound to sell the property whether they desire to do so or not? Such a conclusion from *Crawshay* v. *Collins* and *Featherstonhaugh* v. *Fenwick* seems to be altogether inadmissible, yet to this very conclusion we must logically come if the justice of Sir R. T. Kindersley's reasoning be admitted. It seems clear, then, that his interpretation of these cases must be rejected; and with the rejection of that interpretation his first proposition falls to the ground. His second proposition thus fails for want of a foundation to support it, and it becomes unnecessary to discuss it; but even if the first proposition were admitted, it is by no means clear that the second would result from it in due logical sequence†.

* *V. suprà.*

† It must be admitted that Sir R. T. Kindersley's reasoning in *Darby* v. *Darby* has been alluded to by a higher tribunal without any expression of disapproval; but there was no actual decision respecting it, as it was considered inapplicable to the case before the Court; *v. Steward* v. *Blakeway*, L.R. 4 Ch. 603, 609 (Selwyn and Giffard, LL.JJ., 1869).

On thus reviewing the whole subject, it seems impossible to resist the conclusion that an error has been committed, in modern times, involving the abandonment of a doctrine founded on sound principle and enforced by a pressing weight of authority. This error—looking at the matter historically—seems to have been caused, originally, partly by a misapprehension as to the real meaning of Lord Eldon's *dicta*, partly by a preference of those *dicta* to his judicial utterances and to the law as established before him and fully recognised by him, and partly by an arbitrary construction placed upon a doubtful case*. The erroneous opinion, once started, obtained the apparent confirmation of repeated decisions from the accidental circumstance of several cases coming, within a short space of time, before the same Judge who had first disturbed the existing law†. The new doctrine, thus adventitiously supported, was adopted by successive Judges without much independent examination, as being established by sufficient authority, and has now become inveterate, so that it seems doubtful whether a tribunal of first instance would venture to contravene it, whatever might be the individual opinion of the presiding Judge. If, however, the question should ever be fully argued before a Court of Appeal, it may not be unreasonable to hope that the judicial ruling of one of our ablest Chancellors will be confirmed, and that the heir and the widow will be restored to a position which they occupied until a comparatively recent date, and from which, it would seem, there was no sufficient reason for extruding them.

* *Viz.*, *Townsend* v. *Devaynes*, *v. suprà.*

† *Viz.*, Sir J. Leach. In a long career, any Judge, however eminent, must adopt and give currency to some erroneous views. The rulings of this particular Judge (who was V. C. of E. for 9, and M. R. for 7, years) with respect to a married woman's power of contracting as to her separate estate have long been exploded, and his opinions as to the evidence admissible on the construction of a will have been condemned by a Judge of high authority.

It has not escaped my notice that an eminent writer, now occupying a seat on the judicial bench, has recorded an opinion which, at first sight, seems contrary to that which I have ventured to express on this subject*. But it may be observed that the writer in question appears to aim rather at striking a balance between the modern and the older authorities than at expressing his own conclusion founded on *à priori* argument, or on a critical examination of the reasons of the decisions. It seems possible, therefore, that if the learned writer had adopted the course of entering fully into the reasoning of the subject with the view of forming and stating his own conclusion on the merits, he might have arrived at a result not substantially different from that which I have ventured to put forward as warranted by reasoning and authority.

ALMARIC RUMSEY.

III.—THE EARLY HISTORY OF MALICE AFORETHOUGHT.

WHILE yet Mr. Justice Stephen's History of the Criminal Law is fresh in the minds of many readers, a few supplementary notes concerning the phrase "malice aforethought," which has long formed part of our definition of murder, may perhaps be acceptable. To the very thorough historical account of that phrase, of which we are now happily in possession, little can be added that has any claim to be regarded as certainly true, but something may be guessed which may serve to make intelligible what is still a somewhat dark passage in the history of our law.

* *V.* Lindley on Partnership, last Edition, 667, 670, 671.

In 1531, wilful murder of malice prepensed became an unclergyable felony,* and thenceforth there were two kinds of homicide for which the punishment was death, the one murder and an unclergyable felony, the other manslaughter and clergyable. But the phrase *malice prepensed* was by no means new in Henry the Eighth's day. Seemingly it had been in use early in the 14th century, to distinguish that homicide for which a man should be hanged, from that excusable homicide for which he should have a pardon of course under the Statute of Gloucester.† Then, in 1389, it received statutory sanction. An Act of Richard the Second ‡ provided that a pardon for homicide should be of no avail if the deed had been done of prepensed malice, unless this aggravation of the crime was specially mentioned in the pardon.

The word *murder*, on the other hand, was a very old word, but had early gotten a very strange and technical meaning. Of this it was robbed by the Statute of 1340, which abolished the presentment of Englishry.§ It had been murder if one whose English parentage could not be proved was found slain and the hundred did not produce the slayer. Before the Statute of Marlbridge,|| it had in some parts of the country been accounted a murder if a foreigner by any accident came to a violent death, that is to say, even in this case a murder fine had been levied. Mr. Justice Stephen¶ shows very clearly that the Statute of Marlbridge does not countenance the doctrine put forward in the Year Book of 1348,** and repeated with exaggerations by Coke,†† namely, that before this statute a man was hanged if he slew another in self-defence. The statute merely abolished the practice of fining the hundred when a foreigner perished accidentally. Probably this practice,

* 23 Hen. VIII., cap. 1.

† 6 Edw. I., cap. 9; Stephen, vol. 3, pp. 36-41.

‡ 13 Ric. II., stat. 2, cap. 1.

§ 14 Edw. III., stat. 1, cap. 4.

|| 52 Hen. III., cap. 25.

¶ Vol. 3, pp. 36, 41, 42.

** Y. B., 21 Edw. III., p. 17b.

†† 2nd Inst., 148.

of which there is good evidence,* was an abuse which had gradually grown up. It is not countenanced by the earliest authorities which speak of the murder fine, but to judge from the Pipe Rolls murder fines at one time formed no inconsiderable source of royal revenue, and since we know that one very strange presumption, namely, that every slain man is a foreigner, became firmly established, we need not be surprised that in some districts the rule was even stricter, and that a foreigner's violent death was always reckoned a murder, and a sufficient occasion for bringing money to the royal treasury. It may be worthy of note that Hobbes† long ago pointed out that Coke had misunderstood the Statute of Marlbridge, but Hobbes himself blundered into the very reverse of the truth, and said that the murder fine was levied only when the slain man was of English birth.

However, in 1340, the word murder lost this, its technical, meaning. But the word itself was a very old word, and we read of *morth* long before the time when the murder fine makes its first appearance. It occurs in several of the German Folk Laws or Leges Barbarorum and seemingly always points to some attempt at concealment, more especially to the hiding away of the dead man's body. In England, before the Conquest, it apparently bore a slightly different shade of meaning. It stood for manslaughter by poisoning, witchcraft or other diabolic practice, and such *morth* was punished as a true crime in days when mere deliberate manslaughter was hardly a crime at all in our sense of the word. But in Glanvill‡ that the deed is done in secret is the one mark which distinguishes *murdrum* from

* Bracton, f. 135. Abbrev. Placit., p. 19. A certain man named Humfrey was drowned in the pond of Roger Fitz Everard, at Herst; "Angleceria fuit presentata ad horam et terminum. Infortunium."

† Dialogue of the Common Law. (Works, ed. Molesworth, vol. 6, p. 83.)

‡ Lib. 14, cap. 3.

homicidium simplex, for Glanvill says nothing about the murder fine and makes no distinction between Frenchman and Englishman. The only difference that he thinks fit to note in the treatment of the two crimes which he thus distinguishes, is what looks to us like a mere matter of procedure, namely that in the case of murder, only the nearest kinsman of the slain can bring an appeal, while in the case of simple homicide the appeal may be brought by anyone who is related to the slain by blood or tenure, and who has been an eye-witness of the deed. We should be rash in concluding that there was no other difference, for Glanvill's treatment of the subject is extremely meagre. His distinction is very much that taken in the Assizes of Jerusalem* and there we find this difference between murder and mere homicide the foundation of some very curious special pleading. However, this is all that Glanvill has to say. Bracton† repeats Glanvill's distinction, but immediately blurs and probably perverts it by mentioning the murder fine. Murder, he says, is secret homicide, for the slayer is unknown. By this he means that were the slayer known and produced there would be no murder fine, no murdrum. From this we may conjecture that the word had already lost the sense attributed to it by Glanvill, namely, that of manslaughter done in secret. When, therefore, in 1340, it was set free from the very technical and peculiar sense given to it by the practice of fining the hundred, it did not apparently ever regain its oldest meaning, but came in course of time to signify a manslaughter by what was called malice prepense.

As already said, Sir James Stephen has traced the phrase *malice prepense* back to the first years of the 14th century. A story told by a contemporary chronicler of good repute,‡ enables us to follow the trail a little further.

* Capp. 84-92. † f. 134, b.

‡ Chron. T. Wykes, ann. 1270. (Rolls Series, Ann. Monast., vol. IV., pp. 233-5.)

In the year 1270 a suit between John of Warenne and Alan de la Zouche came to a hearing in Westminster Hall. The litigation degenerated into a brawl. Some of Warenne's retainers drew their swords and wounded Alan. Warenne fled away; Alan was left in the Hall half dead. With difficulty Warenne was brought to justice. He was sentenced to pay both a heavy fine to the king and heavy damages to the injured man; but besides this, he, with fifty knights, was to go on foot from the Temple to Westminster, and there they were to swear "quod non ex præcogitata malitia factum fuerat quod prædictum est, sed ex motu iracundiæ nimis accensæ." The story is remarkable as giving an instance of compurgation in a criminal case, for clearly these fifty knights were compurgators. It is not a case of homicide, for though Zouche died of his wounds, he seemingly did not die until after Warenne had been sentenced and had made his law. Perhaps we ought not to draw from this story many inferences as to the ordinary course of law, for Warenne was a very great man and terms had to be made with him before he would submit himself to justice. Still it seems plain that already *premeditated malice* was a term of the law and was contrasted with sudden anger. Whether this very term can be traced yet further I do not know, but there is a very similar term which certainly has a longer history.

Sir James Stephen has brought to light the important and neglected fact that the words malice prepense occur in a statute of 1389, the statute touching pardons already mentioned. A pardon which in terms is but a pardon for homicide is to be unavailing in case the slain man has been murdered or slain "par agait, assaut, ou malice purpense." Now these words, which are used several times in the statute to describe the worst kind of homicide, are most noticeable. Sir James Stephen remarks that they are very like the definition which the modern Penal Code of France gives of

"assassinat," and this observation opens up a field for speculation into which we may venture a little way.

First may be cited the articles of the French Penal Code,* to which Sir James Stephen refers:—"L'homicide "commis volontairement est qualifié meurtre. Tout meurtre "commis avec préméditation, ou de guet-apens est qualifié "assassinat. . . . Le guet-apens consiste à attendre "plus ou moins de temps dans un ou divers lieux un individu, "soit pour lui donner la mort, soit pour exercer sur lui des "actes de violence."† Certainly this "avec préméditation "ou de guet-apens" may well remind us of the "agait "assaut ou malice purpense" of our own statute. Now it may somewhat confidently be said that the resemblance is not casual. Sir James Stephen sees no reason why the word "guet-apens" should have been introduced into the modern French code, and it is easy to believe that "the "word seems to be regarded as surplusage by the Courts." But whether or no there is any reason for its appearance, the cause of its appearance is doubtless just the same as that which preserves in our own law the phrase "malice aforethought." It has a prescriptive right to take part in the definition of the worst form of homicide.

The appearance of "agait, assaut ou malice purpense" in the statute of 1389, and of "guet-apens" in modern French law may well set us asking whether any similar phrase had been known in England as a term of the law before the days of Richard the Second. Now this very phrase "guet-apens" occurs in a set of laws bearing the name of William the Conqueror.‡ The date of the document in question is very doubtful, but I think, for reasons it were

* Arts. 295-6-8.

† Littré defines guet-apens thus:—"1. Embûche dressée pour assassiner, "pour dévaliser quelqu'un, pour lui faire quelque grand outrage. 2. Fig. Tout "dessein prémédité de nuire."

‡ Will. Conq., I. (Thorpe, Ancient Laws; Schmid, Gesetze der Angelsachsen.)

long to give, that we cannot ascribe it to a time later than the 12th century. In it we read as follows:* "E ki enfreint la pais le rei en Merchenelahe cent souz les amendes. Autresi de hemfore et de agwait purpense. Icel plait afert a la curune le rei." (And he who breaks the king's peace, in the Mercian law, the fine is a hundred shillings; so also of housebreaking, and of premeditated ambush; this plea belongs to the crown of the king.) The writer is making a paraphrase of Canute's laws, among which is found a well-known clause† declaring what rights the king has over all men, in other words, what are the pleas of the crown. In Wessex and Mercia the king has mund-brice (otherwise grith-brice, breach of his special peace or protection), hamsocn (otherwise hamfare, or housebreaking), foresteal, and two other pleas here of no interest. There seems no doubt whatever that the writer of the Leges Willelmi used the French phrase *agwait purpense*, the modern *guet-apens*, as a translation of the English *foresteal*. Concerning this crime something may be learnt from the Leges Henrici‡: "Si in via regia fiat assultus super "aliquem forestel est, et c. sol. emendetur regi, si ibi "calumpniam habeat, ut divadietur vel retineatur ibi "malefactor, vel si est in socna regis. . . . Forestel est, "si quis ex transverso incurrat, vel in via exspectet et "assalliat inimicum suum; sed si post eum exspectet, vel "evocet, ut ille revertatur in eum, non est forestel, si se "defendat." The Latin of these Leges Henrici is perhaps the oddest ever written, but by light which falls from other quarters we may probably explain this passage to mean, that the crime called foresteal is committed, and the king becomes entitled to a fine of a hundred shillings if A. lies in wait for B. on the king's highway, assaults him, and is taken in the very act, but it is not foresteal if A. instead of

* Cap. 2. † Canute, II., 12. ‡ 80, sec. 2, 4.

attacking B. on the flank lets him pass and calls him back, and then there is a fight in which B. gets the worst. For most of this we have other authority. The Doomsday surveyors regarded foresteal as one of the ancient pleas of the crown, and mention the fine of one hundred shillings. Foresteal, says one old glossary,* is "force faite en real chimin." Another† explains it as "coactio vel obsistentia in regia strata facta." When Lanfranc in his celebrated suit asserted the privileges of the church of Canterbury, he proved‡ that throughout the lands of that church the king had but three rights (consuetudines). Of these three, one was that if a man committed homicide or other crime upon the king's highway and was caught in the very act, the king had the fine; if, however, he was not caught there and then, in that case the king had nothing. Foresteal, literally the anticipating of another, the placing of oneself before another, is then an ambush, a plotted assault upon the king's highway. Gradually the word is appropriated by a crime of quite another character, and at last forestalling comes to mean anticipating others in the market—speculating for a rise in the price of corn. But its old sense is sufficiently plain and well attested, and probably the writer of the Leges Willelmi was quite right in translating it by *agwait purpense*. The French words, whose modern forms are *guet*, *guetter*, *aguets*, though themselves of Teutonic origin and seemingly related to our word *watch*, are the immediate progenitors of the English *wait* and *await*,§ and guet-apens is prepensed awaiting. Here then, we have premeditated assault upon the king's highway a plea of the crown, at a time when by no means all assaults and by no means all homicides are pleas of the crown.

* Hoveden (Rolls Series), vol. 2, p. 242.

† Bromton (Decem Scriptores), p. 957; cf. Fleta, p. 63.

‡ Textus Roffensis. (Anglia Sacra, pp. 334-6; Selden's Eadmer, p. 199.)

§ Littré, s. v. guet, aguets; Skeat, s. v., wait, await; Ducange, s. v. wachta.

But has this any bearing on our later law? In Bracton's day every homicide was a plea of the crown and a felony—at least every homicide that was neither justifiable nor excusable. When, however, we ask, as we ought to ask, how this came to be so, all sorts of difficulties meet us. The elaborate account of homicide given us in the Leges Henrici, which, at least in their present form, cannot be much older than the book we ascribe to Glanvill, though very diffuse and disorderly, is a tolerably consistent account, and it lets us know for certain that the writer did not regard mere intentional homicide as a felony, or as a plea of the crown, or as a capital crime. It could be paid for according to a fixed tariff. This tariff, however, owing to the feudalizing process and consequent multiplication of seignorial claims, was extremely intricate. In a large and always increasing number of cases a manslaughter was an infringement of the king's special rights, because of the circumstances, place, time and the like, in which it was perpetrated, and very likely the fines and compositions had become so numerous and heavy that practically the slayer had often to pay with life or member for want of gold. Probably the old system would sooner or later have been found intolerable and have broken down of its own weight. But the strange thing, the great peculiarity of our criminal law, is that it was not supplanted by a myriad local customs, but by one royal and common law. At a very early date the king gathered into his hands almost all criminal justice, so that *crime* and *plea of the crown* became synonyms. The franchise of infang-thief, dearly prized as it was, is but a poor reflection of what existed elsewhere. We may well regard as a curiosity the Halifax Gibbet Law, of which Sir James Stephen gives an interesting account; in Germany or Northern France it would have been no curiosity at all. Probably the chief device whereby the state of things represented by the Leges

Henrici was converted into the state of things represented by Bracton, was legal fiction. Not of course that such fictions can really make any vast change in the conduct of human affairs; they can only be the machinery, not the working power. The facts which made possible the fictions are facts in the general history of England, but a word may be said of the fictions themselves.

It is perfectly true that of any fictitious machinery we see little on the surface of what Bracton writes about homicide and other crimes. But Bracton had a leaning towards Rome and Reason at a time when Romanism and Rationalism were all one, and this leaning, though it may have enabled him to lay down law for unborn generations and undiscovered continents, makes him an untrustworthy guide to the legal notions of his English contemporaries whenever he ventures beyond a mere description of what, as a matter of fact, was done in courts of law.

Without regard therefore to his theory of homicide, a theory derived from the Canonists, let us look at the words which were actually used in an appeal "de morte hominis." The appellant says that B. killed C. "nequiter et in felonia "et in assaltu premeditato et contra pacem domini regis ei "datam."* Now all this may seem to us mere verbiage and common form. I imagine, however, that this brief formula contains no less than three legal fictions, the object of which is to show that the king's rights have been infringed. The necessity for such fictions may seem to us as strange as the fictions themselves. We cannot imagine a manslayer admitting that he has taken life, but questioning why the king, of all people in the world, should interfere; nor can we fancy a slain man's kinsfolk, or his landlord, or the landlord of the slayer protesting against any intervention of the king or his judges. But the twelfth century books require us to imagine all this. The king's criminal justice is hemmed in

* Bracton, f. 138.

on all sides by the rights of others, rights to fines and compositions and forfeitures, and besides all this there is in the background the old notion that the quarrel is a very pretty one as it stands, and that the king has no business to meddle with it. The words just cited had probably become merely formal, though they were formally essential words in Bracton's day, and homicide was in all cases a plea of the crown, but none the less they had once had a serious meaning.

We may indeed pass by *nequiter* as a vituperative adverb, but the charge of felony (*in felonia*) contains, as I believe, fiction the first. Of course it is impossible in a casual sentence to say anything profitable about the word *felony*, but one remark may be pardoned, namely, that whatever may have been its original meaning, whether deceit or cruelty, it came into English law as a foreign word, and when it first appears in England it seems to be no general name for all grave crimes, but the name of a specific crime. That crime is treason, or rather, since the word treason also has changed its meaning, a breach of the obligation which binds a man to his lord; in short, very much such a crime as was afterwards called treason high and petty, when high treason still meant not a crime against "the State," but a crime directly touching our lord the king. I believe that nowhere save in England did felony ever come to stand for a vast class of crimes, or to include such a matter as theft; and it may be observed that in England it soon lost all descriptive power. It came to stand for a number of crimes which could be enumerated, but no definition of felony ever was or could be formed. To say that felony means treason may seem contrary to the first principles of our law, but some of those first principles were only settled late in the day, and looking abroad, more especially to France, whence undoubtedly the word *felony* came to us, there is good reason for supposing that it once connoted a breach of the feudal tie.

Such a crime had long been in England, as elsewhere, the worst of crimes; it had been regarded as the unpardonable sin, the sin of Judas who betrayed his lord, and what is more to our purpose, it had been a crime whereby a man's lands were forfeited to his lord. The steps by which such crimes as mere manslaughter and theft became felonies it is now difficult to retrace, but probably the king's court permitted plaintiffs to "add words of felony," and did not permit the accused to dispute the charge thus made. Our foreign kings successfully asserted the principle that every man, whosesoever man he may be, is the king's man, bound to the king by an immediate fealty; and perhaps to this principle the word felony owes the enormously wide meaning which it gained in England.

Whatever may be the truth about this charge of felony, the charge of breaking the king's peace is almost certainly a fiction. It will be observed, that according to the words of the appeal, B. killed C. not merely "contra pacem "domini regis," but "contra pacem domini regis *ei datam*," that is to say, the slain man had the king's safe conduct, or in some other way was specially under the king's protection, and breach of the king's protection was undoubtedly an ancient plea of the crown. When in the Latin version of Canute's code, and again in Doomsday, and in the would-be laws of Edward, William, and Henry the First, we read of a breach of the king's peace, we ought certainly not to import notions from our later law and to imagine that every common assault or even every homicide could be supposed a violation of that peace, or to think of breach of the king's peace as almost or altogether synonymous with offence. A charge of breaking the king's peace was a definite charge of having done an act of violence to a person, or at a place, or on a day specially privileged. Probably this had lost all practical importance before Bracton's time, and though of course it was absolutely essential to

charge in words a breach of the king's peace, this peace was thought of not as a peculiar immunity attached to places, persons, times and occasions, but as the general peace and order of the realm. Still, to make assurance doubly sure, it might be well to charge that a slain man enjoyed a peculiar peace *ei datam*, and thus make the crime a definite breach of the king's *grith* or *mund*.

But the more important point is that the slayer was guilty of premeditated assault (*in assultu premeditato*). He is thus, I take it, charged with foresteal, agwait purpense, guet-apens. Bracton afterwards gives the words of an appeal "de pace et plagis," an appeal of wounds, and in this the appellant charges that on a certain day he was in the peace of our lord the king in such a place, or that he was in the peace of our lord the king, "in chimino domini regis." * This may show a trace, though only a trace, of the old notion that the king had a special interest in crimes committed upon his highway, though by this time, just as the king's peace was no longer a special privilege, so every highway had become, or was becoming, the king's highway. But the main point to be noticed is that the appeals "de morte "hominis, de pace et plagis," and "de pace et mahemio," all contain the charge of premeditated assault. That this premeditatus assultus was probably a Latin equivalent for the French guet-apens seems very probable when we remember that the procedure by appeal and wager of battle was French, not English, and compare an extremely similar form of appeal for wounds given in the Norman custumal.† "Je me plaing de P., qui en la paix de Dieu et du Duc me "assaillit félonneusement à ma charue, *en aguet pourpense*, "et me fist cest sang et ceste playe que je monstre à la "justice." In the Latin version it runs :—"Ego conqueror "de T. qui ad carrucam meam, *cum agueito præcogitato*, in

* f. 144.

† L'Ancienne Coutume de Normandie (ed. W. L. de Gruchy), cap. 74 (75).

"pace Domini et Ducis me crudeliter assaltavit, et plagam, "maleficium et sanguinem mihi fecit, quod demonstravi "judicio."

This charge of premeditatus assultus, which contains the germ of malice prepense, appears in the appeal "de morte "hominis" as given by Fleta.* At a much later date Staundford† copies the old form of words from Bracton, and I suppose that so long as men waged battle in criminal cases the form remained unaltered. Probably this phrase had a well-known French equivalent. Certainly in the 13th century, and I know not how much earlier, there was a distinction in French law, or at least in the law of some parts of France, between murder and simple homicide, and the distinguishing note of the former was guet-apens. Beaumanoir, who towards the close of the century committed to writing the custom of Beauvais, says that there are four crimes for which a man shall be drawn and hanged and forfeit his possessions. These are murder, treason, homicide and rape. Murder and homicide he thus distinguishes‡:— "Murdres, si est quant aucuns tue ou fet tuer autrui *en agait* "*apensé*, puis soleil couquant dusqu'à soleil levant, ou quant "il tue ou fet tuer en trives ou en asseurement. . . . . "Omicides, si est quant aucun tue aucun *en caude mellée*, "si comme il avient que tençons naist et de la tenchon "vient lede parole et de le parole mellée, por le quele aucuns "rechoit mort souventes fois." This is very strikingly like English law as it emerges three centuries later in Staundford's Pleas of the Crown. Murder is marked by *guet-apens*; manslaughter is killing in what we have chosen to call *chance medley*, but what doubtless should have been called, and must once have been called, even in England, *chaude mêlée*. In an ordinance of St. Lewis,§ and in other French records

* f. 48 † Ed. 1583, f. 78b.

‡ Les Coutumes du Beauvoisis, cap. 30, secs. 3, 6 (ed. Beugnot, vol. 1, p. 412.)

§ Ann. 1245. Ordonnances des Rois de France, vol. 1, pp. 56-57.

of the 13th century, the same distinction appears, and guet-apens was so well-established a term of the law, that Frenchmen writing in Latin were at pains to make such words as *agaitum*, *aguaitum*.* But the more classically-minded seem to have preferred *insidiæ præpensatæ*, or *insidiæ præcogitatæ*, and this introduction of the word *insidiæ* is of importance, because of a certain text in the Vulgate, of which hereafter.

Nevertheless, the punishment for simple homicide was, according to Beaumanoir, the same as the punishment for murder. It may be noted by the way that the French law in the 17th and 18th centuries was quite as strict as the English in holding that every one guilty of homicide is in theory liable to be put to death. In case of excusable homicide, there was, in France, the same necessity of obtaining from the king "lettres de grâce"—which, however, were granted as of course—that there was in England of obtaining a formal pardon.† But whatever may have been the origin of this state of things, which perdured until the Revolution, criminal homicide not amounting to "meurtre" was a capital crime just as meurtre was. I believe that sometimes, and in some parts of France, the murderer was broken upon the wheel, while the mere manslayer escaped with a hanging, but in Beaumanoir's time and district both were hanged. His distinction therefore may at first sight seem futile. Really it was of great importance, though it did not affect the fate of the criminal.

In France criminal jurisdiction was to a very large extent in other hands than the king's—in the hands of great lords and chartered towns. Now murder was a plea which belonged only to the highest jurisdiction. In the records of the 13th century there are many entries touching disputes as to whether some lord's jurisdiction extends to murders.

* Ducange, s. v., agaitum, aguaitum, insidiæ, pensabiliter, pensamentum.

† Jousse, Traité de la Justice Criminelle (ed. 1771), vol. 3, pp. 481-2; Denisart, Collection de Décisions, s. v. homicide, grâce (ed. 1790); Bouteiller, Somme Rurale, ed. L. Charondas le Caron, 1611, p. 287.

A good illustration of the way in which the distinction between murder and simple homicide made itself felt may be found in a case which came before the king's court in 1264.* A man had killed his wife. The mayor and jurats of Noyon hanged him. The bishop of Noyon was aggrieved by this, for that, as he alleged, jurisdiction over murder (justitia multri) was vested in him. The mayor, however, pleaded that there had been no murder, but just a simple homicide en chaude mêlée (simplex occisio facta ad calidam mesleiam). Even late in the 18th century there was this distinction: homicide by guet-apens was, while simple homicide was not, "un cas royal," that is to say, a plea over which only the king's judges had jurisdiction to the exclusion of the seignorial courts.†

This, as it seems to me, may explain the appearance of *premeditatus assultus* in the form of words, whereby, according to Bracton, wager of battle is made. This plea, as say the Leges Willelmi, belongs to the king's crown. This, as say the laws of Canute, is one of the rights which the king enjoys over all men. It is "un cas royal," "placitum "coronæ." Perhaps the averment of premeditated assault was in Bracton's day merely formal. The king's judges must have been unworthy of their successors if they were not prepared to hold that an allegation giving the court jurisdiction cannot be contradicted, and somehow or another the great work of gathering into the king's hands all criminal justice was successfully accomplished. If, however, we are apt to forget that any such work had to be done, we should try to realize the state of things pictured by the Leges Henrici, and consider how easily that might have developed into the state of things that existed in contemporary France; nor should we forget that Glanvill and Bracton give us but one side of a many-sided story, and that side the king's.

* Les Olim, ou Registres des Arrêts (ed. Beugnot), vol. 1, p. 592.

† Jousse, op. cit., vol. 1, p. 193-5.

From *præmeditatus assultus* it was no great leap to *præcogitata malitia*, not nearly so great a leap as it is now from assault to malice, according to the common use of words. Undoubtedly, as Sir James Stephen suggests,* it is but gradually that malice has come definitely to mean a motive, namely, spite, malignity, pleasure in another's pain. "Sufficit diei malitia sua:" †—those familiar with such words as these can hardly have thought that *malitia* must always mean a wicked motive, nor did Wiclif scruple to translate them by "It sufficith to the dai his owne malice." The transition from premeditated assault to malice aforethought is rendered even easier than it would otherwise have been by the statute of 1389, which combines them in the phrase "agait, assault, ou malice prepense." This probably is just such a generalizing crescendo as is at all times dear to the draftsman; "assault" is somewhat wider than "ambush," and "premeditated evil" is a still more general phrase. The transition, however, is fortunately made yet easier for us by an almost contemporary French ordinance and an almost contemporary Scotch statute dealing with the very same subject-matter as this statute of 1389, for it seems that the royal prerogative of pardon was making itself felt as a nuisance in France and Scotland as well as in England.

In a French ordinance of 1356‡ this phrase occurs:— "Nous ne ferons pardons ne remissions de murdres ou de "mutillacions de membres faiz et perpetrés de mauvaiz "agait par mauvaise volunté et par deliberacion."

A Scotch statute of 1369,§ provides that no one asking a pardon for homicide shall be heard until inquisition has been made touching the crime, and if it appears "quod factum "fuerit per murthyr vel per præcogitatam malisiam," a

* Vol. 2, p. 118; vol. 3, p. 56.

† S. Matth., c. vi., v. 34 (Vulg.)

‡ Ordonnances, vol. 3, p. 129.

§ Acts of Parliaments of Scotland, vol. 1, p. 151.

pardon shall not be granted without consent of Parliament. Here, plain enough, is malice aforethought part of the Scotch definition of the worst form of manslaying just twenty years before the same phrase receives statutory sanction in England. But the vernacular phrase in Scotland seems to have been, not *malice aforethought*, but *forethought felony*. In 1373, this occurs as a technical term in a statute,* such as would now be called a temporary Coercion Act. The king is to cause every manslayer to be seized and imprisoned "et incontinenti cognosci facere per assisam si homicidium "fuit perpetratum ex certo et deliberato proposito vel per "forthouch felony sive murthlr, vel ex calore iracundiæ vz "chaudemellee;" in the former case "incontinenti facienda "est iusticia," while in the latter the criminal is to be proceeded against in the ordinary course of law. From this time onwards the contrast between *forthocht felony* and *chaude mellay* recurs at intervals in the Scotch Statute book. The chief consequence of the distinction became one not very unlike that which existed in England after murderers had been deprived of benefit of clergy. In Scotland, the privilege of sanctuary or grith (the church grith of our own old laws) seems to have been a more inviolable impediment to penal justice than it was even in England. At length, however, in 1469, just about the same time that petty treason was made unclergyable in England, and before murder was made unclergyable, the murderer was excepted in Scotland from the privilege of sanctuary.† Those in charge of the sanctuary are to be informed "that sic a man has committit "sic a cryme of forthocht felony tanquam Incediator "[insidiator] viarum et per Industriam for the quhilk the "law grantis nocht nor levis sic personis to Joise [enjoy] "the Immunite of the kirk."

Passing by for one moment this recurrence at a late date of the old notion that way-laying, insidiæ, guet-apens are

* Act. Parl. Scot., Vol. 1, p. 184. † Act. Parl. Scot., Vol. 2, p. 96.

the true marks of the worst kind of manslaughter, we may note the close similarity between the phrases which in the latter half of the 14th century were employed in France, Scotland, and England, to designate the sort of crime which the king was not to pardon. In France it is perpetrated "de mauvaiz agait par mauvaise volunté et par deliberacion;" in Scotland "per præcogitatam malitiam," "ex certo et deliberato proposito vel per forthouch felony;" in England "par agait, assaut ou malice purpense." Probably, almost the same idea is expressed in all these phrases; it is a sort of homicide that is distinguishable from manslaughter en chaude mêlée. Some premeditation is of its essence, and the notion of way-laying or ambush is giving way to that of spite or malevolence.

But our last quotation from the Scotch statute book contains an allusion not to be missed. The Latin words "tanquam insidiator viarum et per industriam," which are introduced into a statute written in the vulgar tongue, are of great historical value. They refer to a passage in Exodus.* Our Authorised Version renders it thus:—"But if "a man come presumptuously upon his neighbour, to slay "him with guile; thou shalt take him from mine altar, that he may die." In the Vulgate the words are, "Si quis *per* "*industriam* occiderit proximum suum, et *per insidias*, ab "altari meo evelles eum, ut moriatur."

Such an one, therefore, the clergy could hardly protect, for this was not merely a text of the Bible, it was a text of the Canon Law.† I imagine that this text had a most important influence on the criminal law of mediæval Europe. It draws a line between two kinds of culpable homicide, and sanctions the belief that insidiæ, waylaying, guet-apens, are the distinctive marks of the worse kind. There are other passages in the Pentateuch which in their

* Exod., cap. xxi., v. 14.

† Decret. Gregor. IX., lib. v., tit. 12, c. 1.

Latin guise make *odium* as well as *insidiæ* characteristic of that manslaughter which is beyond the privilege of sanctuary. It may be conjectured that these passages helped not a little to establish the notion that the real test is subjective, and to supplant premeditated waylaying by malice aforethought.*

It is not impossible that the texts in the Vulgate about *insidiæ* are the root of the whole matter, the cause why the old notion that murder is slaying in secret, or slaying with concealment, was after the formation of the Canon Law replaced by the theory that the differentia of the worst homicide is guet-apens, premeditatus assultus. I imagine, however, that at least a co-operative cause was the fact that waylaying, "force faite en real chimin," was an infringement of the king's own rights, "un cas royal," an ancient plea of the crown, for that the highway was the king's, and they that walked therein enjoyed his peace.

This may seem a superfluous attempt to explain the sufficiently obvious. We are wont to think, or to speak as if we thought that premeditated manslaying is the worst type of manslaying, and are perhaps rather surprised when Sir James Stephen points out that this is no universal truth. But whatever may be natural to us, we ought not to suppose that in the eyes of our remote ancestors the fact of premeditation would naturally have aggravated the guilt of manslaughter. The curious agreement between French and English law as to the necessity of obtaining a pardon in a case of excusable homicide, must suggest that this usage, for which Hale and Blackstone make half-hearted apologies, and which may have owed its long continuance partly to texts in the Old Testament, partly to the fees payable by those who sought a pardon, had its origin not in any accident, or in any desire to extort money, but in the utter incompetence of ancient law to take note of the mental elements of

* Num. cap. xxxv., v. 20, seq.; Deut. xix., v. 4, seq.

crime. Of this incompetence there is plenty of other evidence. The rank of the slayer, the rank of the slain, the rank of their respective lords, the sacredness of the day on which the deed was done, the ownership of the place at which the deed was done—these are the facts which our earliest authorities weigh when they mete out punishment; they have little indeed to say of intention or motive. When they do take any account of intention or motive, then we may generally suspect that some ecclesiastical influence has been at work, as when, for example, the compiler of the Leges Henrici borrows from Gratian and St. Augustine that phrase about *mens rea* which has found a permanent place in our law books. Secresy, or rather concealment, it may be allowed, was from of old an aggravation of manslaughter, so was the taking of an unfair advantage. Of this we see something in the definition of foresteal already quoted; it is foresteal to lie in wait for one's enemy and to attack him on the flank; it is not foresteal to call him back and have a fight with him. But in the days of the blood feud, such days for example as are represented by the story of Burnt Njal, mere deliberation or premeditation cannot have been thought an aggravation of the crime; a man was entitled to kill his enemy provided that he was prepared to pay the price or bear the feud, but he was expected to kill his enemy in a fair, open, honest manner, not to take a mean advantage, not to fall upon him like a thief in the dark. In the fact therefore that premeditation became an element in the definition of murder, there is, as it seems to me, something that requires explanation, and towards such an explanation we have made some advance when we see that ambush or waylaying is an offence against the King, and that the book of Exodus excepts him who has slain another *per insidias* from the privilege of sanctuary.

F. W. MAITLAND.

IV.—THE IRISH SHRIEVALTY.

THE introduction of the Common Law of England into Ireland is understood to have taken place about the period of its reduction under the power of Henry II., in A.D. 1172. The early grants of that King contained reservations, incident to which were wardships, marriages, reliefs, aids, and other feudal exactions, which could be recovered only by executive officers appointed for that purpose in the King's Courts, such as Sheriffs, and so the King in making these grants of the laws of England to Ireland must necessarily have erected Courts for their execution, and for the realization of the profits of the grants so reserved, as otherwise the reservations would have been fruitless (2 Harris's Ware, 80). A writ of King John fixing the commencement of the running of certain common law writs throughout Ireland is confirmatory of the early establishment of English law (Rymer's Fœdera, 131), and a writ of 30 Henry III. is corroboratory. It is addressed to the Archbishops and other great functionaries of the Kingdom, and thus declares:—"Quia, &c., provisum est quod omnes leges et consuetudines quæ in regno Angliæ tenentur, in Hibernia teneantur, &c., quia etiam Rex vult quod omnia brevia de Communi jure quæ currunt in Anglia similiter currant in Hibernia, sub novo sigillo regis mandatum est, &c." (Prynne, 254). The earliest mention of Sheriffs in Ireland is in A.D. 1197, in a writ of John: "Archiepiscopis, episcopis, comitibus, baronibus, justiciariis, vice-comitibus, constabulariis et omnibus balivis et ministris suis Hiberniæ salutem, &c," thus showing who were the then ministers of the King's writs in Ireland. Another writ (3 John, A.D. 1201) is directed "Vice-comitibus," as to other officers, and in A.D. 1210 was issued this mandate: "Fecit quoque Rex ibidem

construere leges et consuetudines Anglicanas, ponens vicecomites aliosque ministros qui populum regni illius juxta leges Anglicanas judicarent" (2 Matt. Paris, 530). Henry II., in the grant of the English law to Ireland, divided the Kingdom into Shires for the administration of justice, and John, to whom is ordinarily assigned the formation of Counties in Ireland, simply revived the institutions of political government, which, in the interval from his father's reign, had been discontinued (1 Harris's Ware 33). It would of course be some time before the English laws and customs became general throughout Ireland, and though Sheriffs and other ministers of justice were appointed, it was only in the English colonies and those parts of Ireland that had been enfranchised by Charters that these laws prevailed. King John had formed twelve Shires—Dublin, Kildare, Meath, Louth, Carlow, Wexford, Kilkenny, Waterford, Cork, Tipperary, Kerry, and Limerick in Leinster and Munster, and these were in the districts to which the laws of the English colonists extended. In Edward I.'s reign there were Sheriffs of Connaught and Roscommon (3 Hall. Const. Hist. in Note, p. 346), but it was not till A.D. 1584, during the period of Sir John Perrot's administration of the country, that Sheriffs were appointed for five counties in Connaught and the province of Ulster, all of which, except Antrim and Down, had hitherto been undivided and was not Shire ground. It is said by Sir John Davis in his Discovery, that it was not till the reign of James the First that Sheriffs were appointed in Ulster, and that it was Sir George Cary who made the first Sheriffs for Tyrone and Tyrconnell. The non-appointment of the Sheriffs, however, would not necessarily preclude the running of the King's writ, for Sir John (in his Discovery, p. 108) says, that in the beginning of the reign of Queen Elizabeth there was no part of Ireland where the royal writ did not run, save in the liberty of Tipperary.

The jurisdiction of the King's officers was not limited by the grants made to the great lords, such as that of Leinster to Earl Strongbow, or the grant of Connaught to Richard De Burgo. The form of these grants contains the saving of pleas of the Crown to the King and his heirs. "Salvis item nobis et hæredibus nostris placita coronæ nostræ," thus authorising the intervention of the King's Sheriff, and preserving the Criminal Jurisprudence to the King and his functionaries, and so it may be that these palatine lords never created Sheriffs *eo nomine*, their officers being designated Seneschals. The rights there reserved of pleas of the Crown would include the holding of Courts of Oyer and Terminer and Gaol Delivery. "Et mandatur Vice-comitibus quod assizas illas et juratores coram eis venire faciant" (Rot. Pat. 3 & 4 Edw. II.) In a writ directed by Edward the First to William Fitzwarren, Seneschal of Ulster, to revoke the dowry of the wife of the late Earl of Ulster, a like saving is inserted of pleas of assize. "Salvis nobis prædictis castris, homagiis, et placitis assisarum et comitatuum infra dictum comitatum Ultoniæ emergentibus, vobis mandamus, &c." In some of the Lordships created by the Crown, in Meath granted to Hugh De Lacy, in Kerry granted to the Earl of Desmond, the Crown appointed a Sheriff of the Cross, with Criminal jurisdiction over the liberty, as it did in every County of Leinster, except Dublin, in which County, as in Louth, Waterford, Cork, Tipperary, Limerick, Connaught, and Roscommon, the King's writs appear to have run from the introduction of the English law. The Sheriffs of the Cross are supposed to have been officers of the King, exercising jurisdiction only in the Church lands lying within the liberty, and so in each County Palatine there would be two Sheriffs, one of the liberty and another of the Cross, whose respective jurisdictions may have been then exactly defined, but no record remains as to the

exercise of these independent offices. In Meath there was a Sheriff of the liberty and a Sheriff of the Cross, so in Ulster and Wexford, and there was a Sheriff of the liberty and a Sheriff of the Cross of Tipperary, as Lord Ormond having obtained a grant of royal liberties in the third year of Edward III., converted his demesne of Tipperary into a County Palatine, and exercised royal privileges in that County. The number of Palatinates then existing was eight: five of these were in Leinster, the Lord of Meath had the same royal liberty in his territory, the Earl of Ulster, in that province, and the Earl of Desmond in Kerry (Davis's Discovery, 107).

Notices of the earliest Sheriffs will be found in the extant Rolls of Chancery in Ireland, from the 2 Edward II., down to the 20 Edward III., from which period down to the 29 Edward III. the Rolls are wanting, having been destroyed in an accidental fire in the year 1300, but in the Roll of 29 Edward III., there appear Sheriffs of Counties and of the Cross then exercising jurisdiction.

The franchise of a County Palatine gave a right of exclusive civil and criminal jurisdiction, unless there was a saving in the grant of pleas of the Crown, subject to an appeal by Writ of Error to the King's Bench. This jurisdiction having been conferred on Strongbow in Leinster, his inheritance devolved on five sisters, who took to their shares, with Palatine rights, Carlow, Wexford, Kilkenny, Kildare, and Leix, since called the Queen's County. The like jurisdiction was given to Lacy, in Meath, and to the Butlers and Geraldines, in parts of Munster (3 Hall. Cons. His. 347).

In Betham on Dignities, 262, there is an entry copied from the Black Book of the Church of the Holy Trinity (A.D. 1297) in these terms:—"The Justice, with the Common Council of our Lord the King, for the more firm establishment of peace in Ireland, ordained and decreed a

general parliament to be held here at this day, and to it were called the Archbishops, Bishops, .&c., and likewise the Sheriffs of Dublin, Louth, Kildare, Waterford, Tipperary, Cork, Limerick, Kerry, Connaught, and Roscommon, and also the Seneschal of the liberties of Meath, Weysford, Katherlagh, Kilkenny, and Ulster, &c., were commanded that each of them for himself, viz., the Sheriff in his full County Court, and the Seneschal in the Court of his liberty by the assent of the County or liberty,—cause to be elected two of the most honest and discreet knights of each County or liberty, who should now appear in this place, having full powers for the whole Community, or liberty, &c., to act and receive, &c., and that each Sheriff and Seneschal should be here in his proper person," &c. In subsequent writs for summoning Parliament, the Sheriffs of the Crosses are named before the Seneschal of the liberties: thus in a parliament summoned by Edward III. at Dublin, the writs are to the Sheriffs of the Counties of Dublin, Louth, Kildare, Catherlagh, Waterford, Limerick, and Cork, the Sheriffs of the Crosses of Meath, Kilkenny, Wexford and Tipperary, and the Seneschals of the said Crosses (Betham, 297). The liberty would appear at first to have been looked on as the more important part of the County. In the Parliament above mentioned, of Edward I., a change was made as to the Sheriff of Ulster, " because the County of Dublin is much disordered, and many parts thereof separated and dispersed at remote distances from the other parts, as well in Ulster and Meath and elsewhere in Leinster with the valley of Dublin, &c., by which they are less competent to do service to our Lord the King in his commands and in his Courts and his people are not sufficiently governed or controlled; it is agreed, that there may be hereafter a Sheriff in Ulster as well as in the Crosses, to make execution in the liberty of Ulster when the Seneschal of the same liberty shall be found in default, and that the Sheriff of

Dublin shall not hereafter enter into Ulster. It is also agreed that Meath shall be a County of itself, and make the lands of the liberty of Trim, as the lands of Theobald Verdun, and all the lands of the Crosses within the precincts of Meath; and that there shall be hereafter a Sheriff there, who shall hold his County Court at Kenlys on Thursday after the County Court of Dublin, and he shall do execution in the liberty of Trim when the Seneschal of the liberty shall be found in default. It is also conceded that the County of Kildare, which was lately a liberty connected with the County of Dublin, shall also be a County of itself, including the Cross lands, and all other lands of the lordship of Leinster contained within its precincts, and shall be absolved altogether from the jurisdiction of the authority of the Sheriff of Dublin, and shall have a Sheriff for itself, as there is now for the County of Dublin" (Betham, 264). Thus the jurisdiction of the Seneschals was transferred to the Sheriffs. The Sheriffs of the Cross lands would have jurisdiction only in these lands for executing process, if, as is supposed, they were Church lands, of which opinion was Sir John Davis, whereas others think that by the saving in some early grants of the donations of Cross lands, the King could not have bestowed them, if they were Church lands, "Salvis nobis et hæredibus nostris crociis et dignitatibus ad eas pertinentibus," &c. (Pat. 9 Joh. ex Libro Nigro, fol. 224). There are two denominations still existing in Ireland under the name of Cross lands, Upper Cross and Nether Cross, in the Barony of Dublin. They may have been lands over which Bishops and Abbots had some jurisdiction, and the saving of them to the King is of importance, for they would appear to have been of considerable extent, judging from the subsidies levied off the *communitates crociarum*, and in each of the Cross lands of every County wherein a liberty was created the King appointed his Sheriff, who it may be presumed had the same jurisdiction as in a County which did

not possess a liberty. In the reign of Edward III., when Tipperary was erected a liberty, there was then only a Sheriff of the Cross. Kerry also about the same period was erected into a liberty, and in it are found a Sheriff of the Cross and a Seneschal of the liberty (29 Edw. III. and 5 Rich. II.) Carlow ceased to be a liberty in the same reign (17 and 18 Edw. III.), so that in A.D. 1354 (29 Edw. III.) there were Sheriffs of the Counties of Dublin, Kildare and Carlow, and Sheriffs of the Cross of Kilkenny and Cross of Wexford; Sheriffs of the Counties of Waterford, Cork, and Limerick, and of the Cross of Kerry and Cross of Tipperary; Sheriffs of the County of Connaught and of the County of Roscommon; Sheriffs of the County of Louth and Sheriffs of the Cross of Ulster. In 1467, at a Parliament held at Dublin, the Lord-Lieutenant was to appoint a Seneschal to the palatine liberty of Meath, which had merged in the Crown; and in the same year, in a Parliament held at Drogheda, it was enacted that the palatine liberty of Meath should continue, notwithstanding its merger in the Crown (Betham, 376). In 48 & 49 Edw. III. a writ issued, directed to the Chancellor and others to certify whether the castle of Kilkenny and the manors of Dunfort and others, which were held *in capite* by Hugh, the son of Edward De Spencer, had, by virtue of the statute of Guildford, come into the King's hands; and it being found that they had been seized into the King's hands, and so remained, the King appointed a sheriff for that county (Harris's Ware, 112). In Henry V.'s reign, Wexford was governed by a regular sheriff (Rot. Cl., 2 Hen. VI.)

The lordships of Ulster and of Connaught came to William De Burgho, Earl of Ulster, and on the marriage of his daughter with Lionel, Duke of Clarence (the son of Edw. III.), the inheritance of both lordships, on the death of the Earl, devolved on the Duke, and through him ultimately came to Henry VII.

These lordships having an exclusive jurisdiction, save in those grants in which the King had saved his royal rights, the sole privilege of executing legal process was vested in them, and hence it was in these liberties that the execution of a writ, if such were necessary, was done by the bailiff of the liberty; and only when the duties were loosely executed in their jurisdiction, did the State interfere, and so enlarged the jurisdictions of the Sheriffs to supply the defects of the Seneschal (2 Harris's Ware, 36). Sheriffs being Common Law officers, and their appointment being contemporaneous with the introduction of the Common Law of England, would be from the same source as then existed in England. From a writ of 17 & 18 Edward III., it appears that the appointing officer of the Sheriff was the Lord Treasurer. In the Patent Roll of 20 Edward III., f. 7, col. 51, there is a writ enrolled to this effect:—"Rex dilecto Waltero de Bermyngham justiciario Hib. potestatem amovendi vice-comites, &c., et alios ministros regis quoscunque quos (minime) sufficientes inveniret, et alios idoneos loco ipsorum deputandi . . . ac etiam recipiendi ad pacem, &c. rebelles, &c., pro uno anno." In the Patent Roll of 32 Edward III., No. 33, is this entry: "Rex commisit Nicholao de Courcy comitatum Cork custodiendum quamdiu Regi placuerit." And in the same Roll "Rex commisit Thomæ Louthir comitatum crociæ Kilkenny, custodiendum quamdiu Regi placuerit." But there issued in 1361, a writ directed to the Justiciary, Chancellor and Treasurer commanding amid other matters that Sheriffs should be elected of the most worthy in every County, and that at least twelve of the most respectable individuals thereof should be responsible for the due execution of the duties and the King's Revenue; that the King's Revenue having sustained injury by the misconduct of the escheator, that office should in future be executed by the Sheriffs; that Seneschals and other officers of the King's demesnes should be appointed by the

Chancellor, Treasurer and the King's Council, and insufficient officers be removed by the same authority; that Seneschals of Liberties within every County be bound to avow their accounts to the Sheriffs (Betham, 299). The entries on the Rolls of Chancery are not numerous, till the reign of Henry IV., when there appears the following, "Rex constituit Walterum Bermyngham de Athnery vice-comitem Conaciæ, durante bene placito—et similiter Fulco Furlong constituitur vice-comes Waysford" (Rot. Pat. 1 Hen. IV., No. 75, fol. 157). Again, in the third year of this reign there is recorded—"Rex scire facit omnibus, &c. Cum nuper per electionem Communitatis comitatus Mediæ commiserit Wilielmo Nugent, Militi, baroni de Delvyn, officium vice-comitis comitatus prædicti, se concessisse ei officium prædictum" (Rot. Pat. 3 Henry IV., No. 33, fol. 161). In the same Roll are entries for the County and the Cross of Kerry, for the Counties of Cork, Kildare, and Louth, and in the Roll of the next year are entries for the appointment to the Shrievalty of Louth and of Meath, "durante bene placito," and also entries for Kildare and Louth, and there are entries of the continuation of some of the appointments, such as "Rex concessit Wilielmo Nugent, baroni de Delvyn, durante bene placito officium vice-comitis comitatus Mediæ, quem habuerat durante anno præcedente." This Baron of Delvyn appears again in the Patent of 6 Hen. IV., and in the second part of the same Roll his office is renewed. There it appears, by two entries, that the election of Sheriffs by the commons of the county as it was originally, was still deemed necessary:—"Rex per electionem communit. civitatis Dublin. constituit Patricium Ferreys alterum coronatorum ibi" (Rot. Pat. 7 Hen. IV., n. 12, fol. 180.) "Rex, ad electionem magistratuum, procerum, et communitat. comitatus Tipperary, commisit Jacobo filio Edmundi le Boteler officium vice-comitis comitatus prædicti, habendum durante bene placito" (7 Hen. IV., No. 13).

The Sheriff was in England down to the reign of Edw. II. an elective officer, but by a statute (9 Edw. II.) it is enacted "that the Sheriffs from henceforth shall be assigned by the Chancellor, Treasurer, Barons of the Exchequer, and by the Justices; and in the absence of the Chancellor, by the Treasurer, Barons, and Justices, and that none shall be Sheriff except he have sufficient land within the same shire where he shall be Sheriff to answer the King and his people." Other statutes affecting the office subsequently passed, and these, by the operation of Poynings's Act, became binding in Ireland. The mode of appointing Sheriffs in Ireland is this:—The Senior Judge of Assize in each County procures the best information he can as to persons qualified to fill the office, and from the list so supplied he takes three names, and in Michaelmas sittings the Chancellor and the Judges, meeting in Chamber, these names are brought forward by the Judge, the qualification of each discussed, one, generally the first on the list, is selected for each County, and the names of the so selected persons are, by the Chancellor, submitted to the Lord Lieutenant, who determines the appointment, and the name is then announced in the *Gazette*, whereupon the office is filled. This was almost the uniform practice till in 1837 the then Lord Lieutenant, the Earl of Mulgrave, took upon himself the right of setting aside the Judges' nomination. There had been in troublous times, probably in 1798, departures from the previous usage, but the cases were altogether exceptional, and no previous or subsequent Lord Lieutenant disregarded the rule till the Vice-Royalty of the noble Earl; but the subject became the matter of discussion in the House of Lords, and the conduct of the Lord Lieutenant was impliedly disapproved of. (Letter to Lord Lyndhurst on the appointment of Sheriffs in Ireland, by H. H. Joy, Q.C.)

A great deal of interest is derivable in tracing the

history of an office like that of Sheriff. Its origin is in the earliest periods of Constitutional history, going back to Anglo-Saxon times, to the Conquest, to Magna Charta. The origin of the name and the duties attached to the office throw light on its early existence. Among the Anglo-Saxons the terms mark and gâ, or shire, designated land held in common, the mark or march was the smallest of the common divisions, and was so called to express something marked out, or defined, a place having settled boundaries where the freemen located for the cultivation of the soil. In addition to this signification, the mark had a legal meaning, as being the member of a State representing those dwelling on the land in relation to their rights and privileges, and so sprang the union of marks in a federal bond, the technical name for such union being the word gâ superseded by and signifying the same as scir, or shire. For the decision of rights between man and man, the Mark had its Markmót, with its principal officer or judge, and the gâ or scir had its chief officer or judge on a larger scale, to settle differences of the people, which were too important to be determined by the Markmót. The power of uniting districts for general purposes was the quality of the gâ or scir, and from this proceeded the necessity of itinerant Judges to hold a shire-moot, or court in the shire. Shire thus became a division of territory, consisting of hamlets, parishes, and liberties, its original meaning being a portion sheared or shorn off. The Anglo-Saxons, however, had their administrative and executive officers for this division, who were designated the Geréfa, and the functions of the persons comprehended under that title were defined by a prefix, and so Scir-Geréfa came to signify the Reeve or Keeper of the shire, the chief officer within its bounds. Even in early times he was the head of the shire or county, the holder of its Tourn or Court, probably the elective chief of the division; he was also its principal fiscal officer, and the

leader of its militia. Down to the fourth year of the reign of Edward III. the Earl was the supreme dignity of the county, and was frequently of the blood royal, taking the name of *Comes*, or companion. These Earls had committed to them from the King the charge and custody of the county. Selden derives *Comes*, not from the Earl participating in the profits of the county, but from his being a companion and councillor of the King. At the Conquest the title Earl gave way to that of Count, and hence county came to be used instead of shire, signifying precisely the same thing, a portion or circuit of the realm into which the land was divided for its better government and the easier administration of justice.

The Earls, by reason of attendance on the King, were unable to manage the details of the business of the county, and so was appointed the *Vice-Comes*, the deputy of the Earl. It has been said that *Vice-Comes* did not denote any subordination to the *Comes*, but meant simply that the King had appointed a person who might "supplere vicem comitis" in those counties where there was no *Comes*. This is fortified by the fact that all the authority of the Vice-Comes or Sheriff is immediately from and under the King, and not from or under the Earl. Sir John Davis, in the "Case of the County Palatine," observes: "Count is a name of honour and is so called a comitando, vel sequendo principem, and those persons who had advanced to this title were 'summi proceres et a rege proximo,' as Cassaneus saith in Catalogo Gloriæ Mundi. And this name or title of honour was ab initio accompanied by an honourable office, for a Comes had a territory assigned to him to guard and govern, which was called a Comitatus. Count or Earl then was the most ancient name of dignity and honour, and before the time of Edward III., was the sole name of dignity and honour in England—Duke, and Marquis, and Viscount, being of later

growth, and Baron not being a name of dignity; and to the office of Earl was assigned the custodiam comitatus and authority to raise the posse comitatûs to suppress riots and rebellion, thus having a martial command as well as a jurisdiction in Civil and Criminal causes."

The procession of the Sheriff to meet the Judges of Assize possessed much significance. It was a medium of intercourse between the Crown and people; the coming together of a county around their old elective officer was a recognition of a principle in our constitution of adherence to precedent, for though the office had ceased to be elective, its duties and rights remained as before, and so the meeting of the Governor and governed long continued a welcome gathering. The Sheriff with the gentry and yeomanry of the county, attended by bailiffs, javelin men, and halberdiers, assembled in front of his hereditary mansion, and being there marshalled in becoming order, the procession moved into the highway across the free common of the march, hailed by the villagers and burgesses of the district, as they recognised in the Shire-Reeve him on whose ancestral lands they and their forefathers had lived and thriven, and so onwards till it reached a spanning bridge graceful for its archery, the verge of the county, where it awaited in anxious expectancy the ministers of justice, the Judges of Assize, thus expressing that reverence to their persons and place which their great errand so eminently deserved. These processions became expensive, Sheriffs rivalled each other in their show, and hence a statute of 13 and 14 Car. II., c. 21, declared that no Sheriff shall have more than forty menservants with liveries attending upon him at the assizes, nor under the number of twenty menservants in any County in England, nor under twelve in any County in Wales, and by a more recent statute, by 22 & 23 of the Queen, c. 32, Justices of the Peace of a county may direct a sufficient number of

police-constables to be employed for keeping order within the precincts of Courts of Assize, and the Sheriff is not bound to provide javelin men or other servants with liveries. These statutes are applicable to England and Wales only.

Lord Bacon, in writing to Sir George Villiers, thus expresses himself:—" Having said thus much of the Judges, somewhat will be fit to put you in mind concerning the principal ministers of justice, and in the first of the High Sheriffs of the counties, which have been very ancient in this Kingdom; I am sure before the Conquest; the choice of them I commend to your care, and that at fit time you put the King in mind thereof, that as near as may be they be such as are fit for these places, for they are of great trust and power; the *posse comitatus*, the power of the whole county being legally committed unto them. Therefore it is agreeable with the intention of the law that the choice of them should be by the commendation of the great officers of the kingdom, and by the advice of the Judges, who are presumed to be well read in the condition of the gentry of the whole kingdom, and although the King may do it of himself, yet the old way is the good way." And again, "the attendance of the Sheriffs of the counties, accompanied with the principal gentlemen in a comely not a costly equipage, upon the Judges of Assizes at their coming to their place of sitting, and at their going out, is not only a civility but of use also; it raises a reverence to the persons and places of the Judges, who, coming from the King himself on so great an errand, should not be neglected."

W. Harris Faloon.

V.—SPECIMEN CODE OF ENGLISH CASE LAW.

WHY should not the Case Law of England be codified, like other branches of the law? America has been before us in this, as she was in her Fusion of Law and Equity; and even our own Law publishers are pressing on the public a scheme of revised and abridged Case Law, and looking to those who are qualified to do so, to pronounce upon it.

The "Notanda, 1877-81," gives a table of cases, during that period "affirmed, approved, followed, disapproved, doubted, not followed, over-ruled, and reversed," and its 4th column goes further, and gives cases "compared, distinguished, accord" (whatever that abbreviation may mean). The Law Reports Digest, Vol. I., 1865-1880, gives "cases followed, over-ruled, and specially considered;" (whatever that means), and Fisher's Consolidated Digest, Vol. II., page 4005 gives "cases over-ruled and impeached" between 1870 and 1880. It is submitted, however, that none of the above plans are sufficiently exhaustive, as mere Expurgatory Lists, while none of them erect the residuum into a Code, which is the main object of the following venture.

The following pages are offered as a Specimen of the mode in which such a Code may be best effected.

The Specimen is confined to Pure Equity Cases; and the bases of my Induction are the Equity Reports from 1875 to 1880, comprising 'Appeal Cases,' 5 vols. (including Privy Council Cases), and 'Chancery Division' Cases, 15 vols. The 'Irish Reports, Equity,' and 'Law Reports, Irish, Chancery,' the Appeals from Ireland in the 'Appeal Cases,' and also the 'Indian Appeal Cases,' are excluded from the bases, as making the Specimen too long.

By 'Pure Equity' I mean the jurisdiction of our Equity Courts, irrespective of that given them by Statute. *That*, together with Procedure cases, is relegated to a 'Deferred Code.'

The same process should of course be applied to the Common Law and other Reports; but as Equity now 'prevails,' I have begun with it.

POSTULATES.

(1). Let cases of *no* authority, by reason of being over-ruled, reversed, varied, or discharged—be omitted.

[An over-ruled differs from a reversed, in not being the same, case.]

(2). Let cases of *weakened* authority, by reason of being questioned, disapproved, or of a Judge doubting or dissenting—be omitted.

(3). Let *superfluous* cases, by reason of their being governed, or covered, by authority, or affirmed—be omitted; upon the principle, that one case is enough to substantiate any legal proposition.

[The govern*ing*, and cover*ing* authority, not the govern*ed* or cover*ed*, is retained, because the latter is really the superfluous one*; and so, the affirm*ing*, not the affirm*ed*, is retained, as being the most recent one, and that of the Highest Court (unless the facts are only sufficiently set out in the Report below).]

(4.) For cases *conflicting, and not followed*, let a Parliamentary *imprimatur*, in the shape of a short Declaratory Act, be given to that which is to prevail.

(5.) Let all *Special* cases go out.

[By "special," I mean those arising on the construction of wills, deeds, and other instruments, the language of which, in the very same words, is not likely to recur,†

* Where a case is governed by more than one, all but one of the governing cases are superfluous, and that one alone (generally the earliest in date) should be retained.

† Short expressions, or common forms *may* recur, and let cases on these be retained.

or which were decided on the special circumstances of the case ('under the circumstances'), or, 'upon the evidence.' Otherwise all *Nisi Prius* cases and trials at the Assizes should be reported.

A primary test of speciality is where the judgment refers to no authorities.]

(6.) Let all *sembles*, *pers* of individual Judges, *queries*, and *obiter dicta* be omitted.*

This gives rise to a very difficult and important question, viz., *the true value of the House of Lords Reports*, their judgments being not like the P.C. judgments, collective, but, strictly, only the '*pers*' of individual Judges, unless adopted in their entirety by the majority. Are Judges' remarks too, within square brackets, during the argument, of the value of a judgment?

(7.) Costs being now discretionary with the Judge, and, at least in one Court, following the result (Broder *v.* Saillard, 2 C.D. 692) unless the circumstances are special—let costs-cases be omitted.

EXPLANATIONS.

(1.) The Code therefore consists of the Residuum left after the above deductions, and is a series of categorical condensed substantive Propositions, placed table-wise, and arranged alphabetically under generic and specific heads (with cross references) of the subject-matter to which it refers.

(2.) An alphabetical list of the Code authorities, as well as of the conflicting cases and cases to be omitted under the Postulates, follows the Code.

(3.) Where the plaintiff's and defendant's names are the same, the initial letter only of the latter is given.

(4.) If a reversing case is reversed, the case which it reversed becomes set up again, and is virtually affirmed,

* By '*obiter dicta*' I mean judgments which travel *out of the record*, to lay down general principles, and, being therefore extra-judicial, are not of any value, *quoad* that case; or perhaps not at all.

and therefore goes out under Postulate 3, while it itself goes out, under Postulate 1 (*e.g.* Lyon *v.* Fishmongers' Co., 1 App. Ca. 662). If a reversing case be affirmed, the reversed case goes out under Post. 1, and the affirmed case under Post. 3, (*e.g.* Burkinshaw *v.* Nicolls, 3 App. Ca. 1004). So if an affirming case is reversed, the case which it affirmed becomes virtually reversed, and goes out under Postulate 1 (*e.g.* Singer Machine Manufacturers *v.* Wilson (3 App. Ca. 376)); while if an affirming case is affirmed, the two earliest go out under Post. 3 (*e.g.* Dawkins *v.* Penrhyn (Baron), 4 App. Ca. 51).

(5.) The pages cited in column No. 6 are those on or from which the 'Code Proposition' is contained, or deduced, in the judgment.

(6.) The 'Code Propositions' occur under the Cross References of subject-matter, only where they seem to fall more properly there than under the main 'subject-matter.'

(7.) Where the grammar allows, read straight on from the 'subject-matter' columns, Nos. 1, 2, to the 'Code Proposition' column, No. 4.

ABBREVIATIONS.

Abbreviations are useful. The following are used.

aff.	= affirms	disappd.	= disapproved
affd.	= affirmed	disappr.	= disapproves
overr.	= overrules	foll.	= follows
overrd.	= overruled	dub.	= dubitat
gov.	= governs	diss.	= dissentit
govd.	= governed	p.	= per
rev.	= reverses	q.	= query
revd.	= reversed	par.	= paragraph*
revg.	= reversing	h.n.	= head note
appr.	= approves	s.	= semble
quest.	= questions	sp.	= special

*** "Paragraph" means paragraph of the Head Note, and the *number* of the paragraph indicates its order in the Head Note, of each Report.**

C.A.	= Court of Appeal	H.L.	= House of Lords
P.C.	= Privy Council	H.C.	= High Court
V.C.M.	= Vice-Chancellor Malins	V.C. of L.	= Vice-Chancellor of Lancaster
V.C.H.	= Vice-Chancellor Hall	V.W. of St.	= Vice-Warden of the Stannaries
V.C.B.	= Vice-Chancellor Bacon		
Fry, J.	= Mr. Justice Fry	L.C.	= Lord Chancellor
M.R.	= Master of the Rolls	C.D.	= Chancery Division
C.J.B.	= Chief Judge in Bankruptcy	P.D.	= Probate Division
ib.	= ibidem		
Pr.	= Procedure		
C.	= Costs		
S.C.	= Same Case; (not necessarily *eodem nomine*)		

The ultimate analysis will therefore stand thus:—

1. Specimen Code and alphabetical list
2. Deferred Code of Statute-Equity, and Practice, Cases
3. Expurgatory Lists
   (i.) Cases reversed, over-ruled, discharged or varied
   (ii.) Cases affirmed
   (iii.) Cases questioned, disapproved, or in which a Judge doubts or dissents
   (iv.) Cases governed, or covered by Authority
   (v.) Special Cases
   (vi.) *Sembles*, queries, *pers*, and *obiter dicta*
   (vii.) Conflicting cases and cases not followed
   (viii.) Self-evident cases, or worthless.

N.B.—The modern reports of Appealed cases being bound up with those in the Court below and forming one Report, the beneficial application of Postulates 1 and 3 will not appear in the Specimen Code so great, as when the earlier cases come to be codified.

Subject-Matter.		Cross References.	Code Proposition.	Authority.	Report and Court.	Date.	Observations.
Generic.	Specific.						
Abatement		[Agreement]					
Account		[Injunction] [Negative Covenant] [Payment into Court]					
Accounts	Opening	[Opening]					
Accumulations			which fail under the Thellusson, must be treated as gifts which fail under the Mortmain, Act (*i.e.*, there is an intestacy).	Weatherall *v.* Thornburgh	8 C.D. 269 C.A.	Mar. 11, 1878	
Acknowledgment		[Mortgagor]					
Acquiescence		[Assent]	must, to deprive one of his legal rights, be such as would make it fraudulent in him to set them up.	Willmott *v.* Barber	15 C.D. 105 Fry, J.	June 19, 1880	q. *ob. dict.*
			Requisites of such fraud are—Acquiescer must 1. Know his own rights, and they must be inconsistent with those of the other party. 2. Know the other party's mistaken belief of his rights. 3. Encourage the other side directly or indirectly in his acts. 4. Other party must mistake his legal rights, or have done some act in the faith of such mistake.	ib.	ib.		
			to constitute, Acquiescer must have a right to allow that which he stands by and sees done. A Board, therefore, having only power to consent *in writing* only, is not bound by *tacit* acquiescence.	Kerr *v.* Corporation of Preston.	6 C.D. 468 and par. 2 M.R.	Dec. 18, 1876	
			in a limited breach of covenant, don't bar plaintiff's remedy for a wider.	Richards *v.* Revitt	7 C.D. 226 Fry, J.	Nov. 20, 1877	

			a mandatory injunction to remove buildings wrongfully erected will not be granted, after 5 years' Acquiescence by plaintiff.	Gaskin *v.* Balls	13 C.D. 328 and par. 1–3 C.A.	Dec. 5, 1879.	
			Is Quiescence, under circumstances from which Assent of the injured party may be inferred, and is an Estoppel by words or conduct.	De Bussche *v.* Alt	8 C.D. 314 C.A.	Mar. 12, 1877	
Actus Dei		[Riparian]					
Administration	action	[Annuity]	Inquiry in, what a man's property consists of, and order thereon enrolled, don't preclude a Bill alleging that part of (such property) was obtained by fraud.	Widgery *v.* Tepper	7 C.D. 426 and par. 3, 4 C.A.	Dec. 7, 1877	s. evident.
	decree	[Wilful default]	The order under, of the liability of testator's estate to debts funeral and testamentary expenses and costs is, 1, undisposed personalty; 2, descended realty; 3, specific legacies (exonerating 2 from probate duty).	Shepheard *v.* Beetham	6 C.D. 603 and par. 1, 2. V.C.M.	July 3, 1877	
			will not be limited to English assets of testator domiciled in Scotland, if the P.D. has granted a general Probate.	Stirling-Maxwell *v.* Cartwright	11 C.D. 522 C.A.	Apr. 7, 1879	
		[Order *nisi*]	Part-paid creditors under, are only entitled to rateable proportions of further assets.	Ashley *v.* A.	4 C.D. 769 C.A.	Jan. 13, 1877	
Administrator		[*Ultra vires*]	*durante minoritate* has all the powers of a general administrator, including a power of sale to pay debts.	Cope, *re*	16 C.D. 52 M.R.	Nov. 11, 1880	s. beyond basis.
Admiralty	Court	[Lien]					
Admission		[Evidence]					
Advancement			authorizes maintenance.	Breed's will, *re*	1 C.D. 229 M.R.	Dec. 11, 1875	

Subject-Matter.		Cross References.	Code Proposition.	Authority.	Report and Court.	Date.	Observations.
Generic.	Specific.						
Advancement			presumption of an advancement being a gift, and not a loan, arises from the moral obligation—which a mother is not under—to give.	Bennet *v.* B.	10 C.D. 478 and par. 1 M.R.	Jan. 25, 1879	
	to wife		when a Husband transfers money into the names of himself, his wife, *and* a stranger, it is an advancement or provision to her surviving for her absolute benefit, and the stranger is a Trustee for her.	Eykyn's Trusts, *re*	6 C.D. 119 V.C.M.	June 15, 1877	
Affidavit		[Evidence]					
Agent		[Co-agent] [Counsel] [Foreign] [Secretary] [*Uberrimæ fidei*]	agency created by illegally constituted company is void.	S.W. Atlantic, &c., Co., *re*	2 C.D. 778 C.A.	Apr. 12, 1876	
			Employment by Trustees of a Solicitor to invest trust funds, don't make him their agent to receive notice of Incumbrances.	Saffron Walden, &c., Society *v.* Rayner	14 C.D. 409 C.A.	Apr. 16, 1880	rest, fact — (what constituted notice) and on the evidence.
			The offer to an Agent, of a sum fixed by his Principal, by the party liable to pay it, binds the Principal.	Gretton *v.* Mees	7 C.D. 839 and par. 1, 2. Fry, J.	Feb. 4, 1878	par. 3 'Costs.'
	lien of		The Agent of a Company to sell goods in a shop has a Lien on them, for a Bill accepted by him within his authority.	Pavy's Patent, &c., Co., *re*	1 C.D. 631 V.C.M.	Jan. 27, 1876	
	of Mortgagee		The want of a power of attorney (to the agent of a mortgagee) to receive the mortgage money (the mortgagor not appearing at the day) is no bar to Foreclosure.	Cox *v.* Watson	7 C.D. 196 V.C.M.	Dec. 21, 1877	s. special.

Agreement			A. & B. agree to sell to C. It turns out that B. has no interest in the property. A. must sell his (share) with an Abatement from the purchase-money.	Horrocks *v.* Rigby	9 C D. 182 Fry, J.	Mar. 27, 1878	
		[Contract]	an Agreement, for value by A., with B.'s consent, to settle specified property of B , binds B. and his heir.	Lee *v.* L.	4 C.D. 179 M.R.	Dec. 4, 1876	
		[Specific performance.]	Default in performance of one part of even a single agreement, where on the face of it it is intended to be carried out piecemeal; is no bar to action for specific performance.	Odessa, &c., Co. *v.* Mendel	8 C.D. 244 and par. 3 C.A.	Feb. 23, 1878	What is 'single'?
Annuity			an annuitant legatee, having a charge on residue, may have judgment in an administration action.	Wollaston *v.* W.	7 C.D. 59 Fry, J.	Nov. 17, 1877	
		[Will] [Maintenance]	The simple gift of an annuity, followed by a direction to set apart a fund to secure it, does not cut down the annuitant's right, to income only.	Mason, *re*	8 C.D. 413 M.R.	Mar. 6, 1878	
Anticipation	**restraint on**		cannot be evaded by any device whatever.	Stanley *v.* S.	7 C D. 591 V C.M.	Jan. 26, 1878	See now s. 39 Conveyancing Act, 1881.
			A wife without power of anticipation (who is equitable tenant in tail of land to her separate use) may, with Husband, bar it, and by devising it, defeat Husband's right to curtesy therein, which he would otherwise have had.	Cooper *v.* McDonald	7 C.D. 288 C.A.	Dec. 3, 1877	Par. 3, not really a 'per' but a judgment, because affirmed.
		[Separate estate]	does not apply to the gift of a reversion in a sum of money to a Wife, "to her separate use without power of anticipation," after it falls into possession.	Croughton's Trusts	8 C.D. 460 V.C.B.	May 4, 1878	
Appeal							See Deferred Code.
Appointment		[Wife]					

Subject-Matter.		Cross References.	Code Proposition.	Authority.	Report and Court.	Date.	Observations.
Generic.	Specific.						
Appropriation		[Bill of Lading]	a direction by Consignor to Consignees to place the invoice price, of goods shipped, to his credit, and bills drawn against them to their debit—is no Appropriation of the goods to protect the Bills.	Banner. *ex parte.*	2 C.D. 290 and par. 3 C.A.	Feb. 18, 1876	
Arbitration		[Award] [Fraud]					
Articles		[Rectification]					
Assent		[Consent]					
Assets		[Widow] [Administration] [Executor]					
Assignment		[Declaration] [Licence]	The Lessee of an Owner of land, who has the benefit of a Covenant, may sue on it as his Assign.	Taite *v.* Gosling	11 C.D. 277 Fry, J.	Mar. 4, 1879	
			notice to Assignee in Bankruptcy of the assignment of a *chose in action* is not necessary.	Irving, *re*	7 C.D. 421 C.J.B.	Nov. 12, 1877	But see 'Bankruptcy.'
Attesting	witness		attesting a codicil bars a beneficiary under a valid parol trust.	Fleetwood, *re*	15 C.D. 594 par. 1-3, 8 V.C.H.	May 3, 1880	
Attorney	[power of]	[Power] [Agent]					
Auctioneer		[Sheriff]	should not be defendant to a specific performance action, when he holds a *small* deposit, unless he refuses to pay it into Court.	Earl of Egmont *v.* Smith	6 C.D. 475 and par. 3 M.R.	Jan. 23, 1877	s. 'Pr.'
Award			An award, on a reference to Arbitration ordered by Court, and not appealed from, cannot be disputed.	Jones *v.* J.	14 C.D. 595 C.A.	June 30, 1880	

(To be continued.)

CHARLES FRANCIS TROWER.

Legal Obituary of the Quarter.

(ENGLAND, SCOTLAND, AND IRELAND.)

ASHMORE, Fitzroy Paley, M.A., of the Inner Temple, Esq., Barrister-at-Law, aged 37. Mr. Ashmore, who was a member of the Oxford Circuit, was called to the Bar in 1870. He was of University College, Oxford, Third Class, Jurisprudence and Modern History, 1868; B.A., 1869; M.A., 1872. *June* 12.

ATTWELL, Thomas Myers, Esq., Solicitor, aged 52. Admitted in 1872. *May* 22.

BARNES, Joseph, of Rutland House, Dolphin's Barn, and of the King's Inns, Esq., Barrister-at-Law, aged 74. Mr. Barnes was called to the Irish Bar in 1838. *May* 1.

BARRINGTON, William Matthew, Solicitor (Irel.), aged 27. Admitted 1878. Third son of Sir Croker Barrington, 4th Bart. (cr. 1831.) *June* 10.

BEALE, William John, Esq., J.P., of Bryntirion, Co. Merioneth, formerly Solicitor, aged 75. Mr. Beale, who was admitted a Solicitor in 1837, had been in practice both in London and Birmingham. He was in the Commission of the Peace for Merionethshire, and served the office of High Sheriff in 1878. *May* 21.

BOWYER, Sir George, D.C.L., of Denham Court, Buckinghamshire, and of Radley Park, Berkshire, Bart., and of the Middle Temple, Barrister-at-Law, aged 71. Sir George who was called to the Bar in 1839, was M.P. (Liberal), for Dundalk, 1852-68, and for Wexford, 1874-80. He was a Knight of Justice of the Order of St. John of Jerusalem, and was also a Knight Grand Cross of the Order of St. Gegory the Great, and of the Constantinian Order of St. George, decorations conferred by the Pope and the King of Naples, and was a Chamberlain of the present Pontiff. Sir George, who was known in legal literature as an authority on Canon Law, was the seventh Baronet of Denham (England, cr. 1660) and third of Radley (Gt. Britain, cr. 1794), his grandfather, Admiral Sir George Bowyer, third son of the third Baronet of Denham, having been created a Baronet of Great Britain in 1794 in

acknowledgment of his services under Lord Howe. The late Sir George received the Honorary degree of M.A. in 1839, and that of D.C.L., in 1843, both from the University of Oxford. He was Reader at his Inn in 1850. *June* 7.

Boyle, Robert Frederick, M.A., formerly Fellow of All Souls College, Oxford, and of the Middle Temple, Esq., Barrister-at-Law, aged 41. Mr. Boyle, who was called to the Bar in 1866, was of Balliol College, Oxford, where he took a first class in Classics at Moderations, 1861, and graduated in 1866, and from which he was elected to a Fellowship at All Souls in 1865. He subsequently obtained, and filled for several years, the post of one of H.M. Inspectors of Schools. Mr. Boyle was second son of the late Hon. John Boyle, who was second son of Edmund, eight Earl of Cork and Orrery, K.P. The Earldom of Cork, in the Peerage of Ireland, cr. 1620, passed in 1753 to the late Mr. Boyle's ancestor, John, 5th Earl of Orrery (cr. 1660), in the Peerage of Ireland, who became 5th Earl of Cork, being also 2nd Lord Boyle of Marston (cr. 1711) in the Peerage of Great Britain. *May* 15.

Bridgman, Hon. Frederick, Acting Chief Justice of the Gold Coast, and Queen's Advocate, aged 45. Mr. Bridgman, who was of the Inner Temple, and was called to the Bar in 1860, was the eldest son of F. H. Bridgman, Esq., and fell a victim to the climate of the colony when he had not long been in office. *May* 5.

Broadhurst, Edward, M.A., of the Middle Temple, Esq., Barrister-at-Law. Mr. Broadhurst, who was called to the Bar in 1837, died at Sydney, New South Wales, where he had for some years resided. He was of Magdalen College, Cambridge, where he graduated as Junior Optime, and 1st Class Classical Tripos, in 1832. *April* 7.

Cameron, Malcolm J., Esq., Solicitor (Irel.), Ballymoney. Admitted in 1873. *June* 18.

Champion, Charles, Esq., Solicitor, aged 69. Admitted in 1847. *May* 3.

Chichester, John Hopton Russell, of the Middle Temple, Esq., Barrister-at-Law, aged 77. Mr. Chichester was called to the Bar in 1829. *May* 1.

Chichester, Robert Bruce, of Lincoln's Inn, Esq., Barrister-at-Law, aged 83. Mr. Chichester, who was called to the Bar in 1826, and had been a member of the Oxford Circuit, was son of Col. John Palmer Chichester, and brother of the late Sir John

Palmer Bruce Chichester, of Arlington, Bart. His mother was a niece of James Bruce of Kinnaird, the celebrated African traveller. The Chichesters of Arlington were descendants of a younger son of Chichester of Raleigh, Devon. *June* 11.

CLARK, Thomas, Esq., Procurator-Fiscal, Airdrie District. Mr. Clark had held office as Sub-Dean of the Society of Solicitors and Law Agents of his native town of Airdrie, where he had passed his apprenticeship, and where he subsequently filled the post of Sheriff Clerk Depute, which he held till appointed Procurator-Fiscal in 1870. *March* 20.

COCHRANE, Hon. Sir James, Kt., of Glenrocky, Gibraltar, for thirty-six years Chief Justice of Gibraltar, aged 85. Sir James, who was called to the Bar by the Hon. Society of the Inner Temple in 1829, was son of Hon. Thomas Cochrane, Speaker of the House of Assembly of Nova Scotia. He was appointed Attorney-General for Gibraltar in 1837, and was raised to the Bench as Chief Justice in 1841. In 1845 he received the honour of knighthood, and he retired from the office in 1877, when Lord Napier of Magdala, the Governor, bore testimony that he had "eminently maintained the high character of the Bench." *June* 24.

COPEMAN, George, of Dunham Lodge, Norfolk, and of the Inner Temple, Esq., Barrister-at-Law, aged 65. Called to the Bar in 1857. *May* 29.

CUNNINGHAM, Alexander, Esq., W.S. (Scot.), aged 78. Mr. Cunningham, whose father, Charles Cunningham, Esq., of Newholm, was a member of the same Society, was admitted a Writer to the Signet in 1827. During the period 1842-6 he was Joint Secretary, with his father, to the Commissioners for Northern Lights, and succeeded to the Secretaryship in 1846, retiring in 1875. *June* 16.

DEASY, Right Honble. Rickard, P.C. (Irel.); Lord Justice of Appeal (Irel.), aged 70. The late Lord Justice, who had for some time past been in a weak state of health, was second son of Rickard Deasy, Esq., of Clonakilty, Co. Cork. Proceeding to Trinity College, Dublin, he took his B.A. in 1833, and subsequently his M.A. in 1847, and the degrees of LL.B. and LL.D. in 1860. He was called to the Irish Bar in 1835, and took silk in 1849, becoming Third Serjeant in 1858. In 1855 he entered Parliament as M.P. (Liberal) for Co. Cork, and sat till he was raised to the Bench in 1861. Deasy's Act, as it is called, showed the desire of the future Lord Justice to find a *modus vivendi* on

the Irish Land question, but as a measure it remained inoperative. In 1859 Mr. Deasy was Solicitor-General, and in 1860 Attorney-General for Ireland. In 1860 he was made a Baron of the Exchequer, and sworn of the Irish Privy Council, and in 1878 he was raised to the Bench of the Court of Appeal. *May* 6.

DIGBY, George Digby Wingfield, M.A., D.L., J.P., of Sherborne Castle, Dorsetshire, and of Coleshill, Warwickshire, and of the Inner Temple, Esq., Barrister-at-Law, aged 85. Mr. Wingfield Digby, who was heir-general of the Earls Digby, was called to the Bar in 1824, and was eldest son of William Wingfield, subsequently Baker, Esq., of Orsett Hall, Essex, M.P. for Bodmin, Judge for Wales, and a Master in Chancery, by Lady Charlotte, daughter of the first Earl Digby. He proceeded from Westminster to Christ Church, Oxford, where he duly graduated. In 1856 he assumed the name of Digby, on inheriting the Sherborne Castle estate from his uncle, the last Earl Digby, and in 1860 served the office of High Sheriff for Dorsetshire, for which county he was also a Deputy Lieutenant and Magistrate. *May* 7.

DOWMAN, William, Esq., Solicitor, Sudbury, aged 66. Admitted in 1840. *May* 15.

DUNDAS, William Pitt, Esq., C.B., Advocate at the Scottish Bar, formerly Depute Clerk Register, and Registrar-General for Scotland, aged 82. Mr. Pitt Dundas, who came of a race of distinguished Scottish lawyers, was called by the Faculty of Advocates in 1823. He was youngest son of Right Honble. Robert Dundas of Arniston, M.P. for Edinburghshire, Lord Chief Baron of the Exchequer in Scotland, by Elizabeth, daughter of Henry, first Viscount Melville, and was grandson of Robert Dundas of Arniston, Lord President of the Court of Session, and great grandson of yet another Robert Dundas of Arniston, Solicitor-General and Lord Advocate for Scotland, and also Lord President of the Court of Session, in succession to Duncan Forbes, of Culloden. In 1853 Mr. Pitt Dundas was appointed Deputy Keeper of the Privy Seal for Scotland; in 1856 Registrar-General of Births, Marriages and Deaths; and in 1876 he was nominated to a Civil Companionship of the Order of the Bath. He retained, down to the time of his death, the Keepership of the Record of Entails, having some years ago resigned the more laborious offices with which he had been so long identified. *May* 17.

DUNN, Jonathan, M.A., of Lincoln's Inn, Esq., Barrister-at-Law, aged 29. Mr. Dunn, who was called to the Bar in 1878, was M.A. of Exeter Coll., Oxford (B.A., 3rd Class, *Jurisprud.*, 1877), and was eldest son of William Dunn, Esq., of Carus Lodge, Lancaster. *May* 12.

EADEN, John, Esq., Solicitor, Cambridge, aged 71. Mr. Eaden, who was admitted in 1832, had been Clerk to the Justices for the Borough of Cambridge since 1836. *July* 1.

EASTWICK, Edward Backhouse, M.A., C.B., of the Middle Temple, Esq., Barrister-at-Law, aged 69. Mr. Eastwick, who was called to the Bar in 1860, was educated at the Charterhouse, from which he proceeded to Merton Coll., Oxford. He went out, without taking his degree, to India, as a Cadet of Bombay Infantry. Devoting himself to Oriental languages, he was transferred to the Political Department, in which he served in Scinde and Kattywar. He was author of numerous works on the Literature, Grammar, and Philology of the Persian and other languages of India. Failure of health compelled his return to Europe, but he was again in the East in the Diplomatic Service, as Secretary of Legation at the Court of Teheran, 1860-63. He had in the interval filled the chair of the Hindustani Professorship at the Hon. East India Company's College, Haileybury, and served in the Political Department at the India Office. In 1864 and 1867 he was sent as Commissioner to Venezuela, and in 1866 was made a C.B. and Private Secretary to Lord Cranborne, Secretary of State for India. He was M.P. (Conservative) for Penrhyn and Falmouth, 1868-74, and in 1875 received the honorary degree of M.A. from his University in recognition of his services. *July* 16.

EDYE, Thomas, Esq., Solicitor, formerly of Montgomery, aged 91. Mr. Edye was son of Edmund Edye, Esq., of Hatherleigh, Devon, also a Solicitor. *April* 27.

ELLISON, Cuthbert Edward, M.A., of the Inner Temple, Esq., Magistrate, Lambeth Police Court. Mr. Ellison, who was of Trinity College, Cambridge (B.A., 1840; M.A. 1843), was called to the Bar in 1845, and was appointed one of the Stipendiary Magistrates for Lambeth in 1864. *May* 26.

FOSTER, Alfred William, of the Inner Temple, Esq., Barrister-at-Law, aged 37. Mr. Foster, who was called in 1872, was a Member of the South-Eastern Circuit. *May* 28.

FRY, Charles Edward, Esq., Solicitor, of London, and of Holsworthy, Devon, aged 46. Admitted in 1866. *May* 21.

GARFIT, Thomas, D.L., J.P., of the Middle Temple, Esq., Barrister-at-Law, formerly M.P. for Boston, aged 67. Mr. Garfit, who was called to the Bar in 1846, and was son of the late William Garfit, Esq., of Boston, Lincolnshire, sat for his native borough on the Conservative side of the House in the last Parliament, and was a Deputy-Lieutenant and Justice of the Peace for Lincolnshire. *May* 29.

GOLDSMITH, George, M.A., Camb., of the Middle Temple, Esq., Barrister-at-Law, aged 80. Mr. Goldsmith, who was called to the Bar in 1836, was of St. Peter's College, Cambridge, where he graduated in 1829. *May.*

GREENLAND, Alfred, of the Middle Temple, Esq., Student-at-Law, aged 26. Mr. Greenland was eldest son of Alfred Greenland, Esq., of Chesham House, Hampstead. *March* 31.

GUSH, William Frederick, Esq., Solicitor, aged 43. Mr. Gush, who was Solicitor to the General Assurance Company, was admitted in 1861. He was the eldest surviving son of William Gush, Esq., of The Grange, Old Malden. *June* 16.

HEWITT, Benjamin Thomas, Esq., Solicitor (Irel.), aged 53. Mr. Hewitt, who practised in Belfast, was admitted in 1855. He was, we learn through the *Irish Law Times*, one of the drafters of the Constitution drawn up for the Church of Ireland after the Disestablishment, and was himself Member of the Diocesan Synod of Down and Connor. *June* 11.

HOWE, Thomas Edward, of Lincoln's Inn, Esq., Barrister-at-Law, and of Rosenau, Datchet. Called in 1858. *July* 18.

HOWELL, David, Esq., Solicitor, aged 58. Mr. Howell, whose father, the late John Howell, Esq., J.P., of Carmarthen, was also a Solicitor, was admitted in 1857. *April* 24.

HUGHES, John, of the Inner Temple, Esq., Barrister-at-Law, aged 77. Mr. Hughes, who was called to the Bar in 1839, was representative of the well-known Welsh house of the Barons of Kymmer in Edeirnion, and was an eminent Welsh genealogical scholar. *July* 4.

ISBISTER, Alexander Kennedy, M.A., LL.B., of the Middle Temple, Esq., Barrister-at-Law, aged 61. Mr. Isbister, who was Dean of the College of Preceptors, was called to the Bar in 1864. He was M.A. of the University of Edinburgh, and LL.B. (1866) of the University of London. *May* 28.

JACOBS, Hon. Simeon, C.M.G., late Attorney-General, Cape of Good Hope, aged 51. The late Mr. Jacobs, who was called to the English Bar by the Hon. Society of the Inner

Temple in 1852, besides having formerly been Attorney-General at the Cape, had been a member of the Executive Council since 1872, according to the *Colonial Office List*. He was created C.M.G. in 1882. *July* 15.

JAMES, John, Esq., formerly Deputy Clerk of the Crown and Peace, Roscommon. *July* 8.

JESSEL, Edward, of the Middle Temple, Esq., Barrister-at-Law, aged 61. Mr. Jessel, who was brother of the late Master of the Rolls, was called to the Bar in 1869. *May* 21.

JOHNSON, Robert George, M.A., J.P., of Plas Llanrhydd, Denbighshire, and of the Inner Temple, Esq. Barrister-at-Law, aged 58. Mr. Johnson, who was called to the Bar in 1849, was of Trinity College, Cambridge, to which he proceeded from Rugby School. He was eldest son of George Johnson, Esq., of Plas Llanrhydd, and was formerly a member of the North Wales and Chester Circuit, and was in the Commission of the Peace for Denbighshire. *May* 2.

KERMACK, William Ramsay, Esq., W.S. (Scot.), aged 62. In Mr. Kermack, says the *Scotsman*, "a distinguished professional man has been removed from Edinburgh legal circles." A prizeman in the Law classes of the University of Edinburgh, to which he proceeded from the Edinburgh Academy, Mr. Kermack, whose father, the late John Kermack, Esq., had also been a Writer to the Signet, was admitted a member of the Society in 1843, and in 1872 was appointed Fiscal thereof in succession to Mr. A. Gibb Ellis. *May* 8.

KNOTT, John Reginald Stanhope, of the Middle Temple, Esq., Barrister-at-Law, age 30. Mr. Knott, who was a member of the Oxford Circuit, was called to the Bar in 1875, and was son of William Knott, Esq., of Lower Wick, Worcestershire. *May* 20.

LANE, John, Esq., Solicitor, Stratford-on-Avon, aged 71. Mr. Lane, who had been Clerk to the magistrates for the Borough of Stratford, was admitted in 1837. *June* 17.

LEWIN, Samuel Herbert, Esq., M.A., Solicitor, aged 44. Mr. Lewin, who was admitted in 1863, was formerly scholar of Trinity College, Cambridge, where he graduated B.A., Second Class, Classical Tripos, 1860; M.A., 1863. *May* 29.

LLOYD, James Edward, of Lincoln's Inn Esq., Barrister-at-Law, aged 37. Called to the Bar in 1872. *July* 23.

MASON, James, Esq., Solicitor, aged 64. Admitted in 1859. *June* 6.

MELDON, James Dillon, Esq., J.P., Solicitor (Irel.), Kingstown, aged 80. Admitted in 1836. *July* 18.

MILLIE, Charles Archibald, Esq., M.A., LL.B., Advocate at the Scottish Bar. Mr. Millie, who was called by the Faculty of Advocates in 1870, had, we learn from the *Scottish Law Magazine*, achieved considerable distinction at the Bar. He was M.A. and LL.B. (1868) of the University of Edinburgh.

MOXON, James Henry Harmar, LL.D., of the Middle Temple, and South-Eastern Circuit, Esq., Barrister-at-Law, aged 36. Mr. Moxon, who was called to the Bar in 1871, was of Trinity College, Cambridge, where he graduated in the Law Tripos in 1866, took the Chancellor's Gold Medal in 1869, subsequently proceeding to the degree of LL.D. *May* 23.

NORTH, William, Esq., Solicitor, Leeds, aged 71. Admitted in 1849. *July* 24.

NORTON, John Bruce, of Lincoln's Inn, Esq., Barrister-at-Law, late Advocate-General, and member of the Legislative Council, Madras, aged 68. Mr. Norton, who was of Merton College, Oxford, was called to the Bar in 1841. He was son of the late Sir John David Norton, Puisne Judge of the Supreme Court, Madras, and was well known as the author of a standard work on Indian Law, the "Law of Evidence." On the creation of the office, he held for some years the post of Lecturer on Indian Law in the Inner Temple. *July* 13.

O'CONOR, Denis Maurice, Esq., LL.D., M.P., of Cloonalis, Co. Roscommon, and of the Middle Temple, Barrister-at-Law, aged 42. Mr. O'Conor, who was son of the late, and brother of the present, O'Conor Don, was called to the Bar in 1866. He proceeded from Downside College, Bath, to the University of London, where he took his M.A. degree in 1861, and his LL.D. in 1866. In 1865 he served the office of High Sheriff for Roscommon, and was in the Commission of the Peace for that County. In 1868 he was returned in the Liberal interest as Knight for the Shire of Sligo, and continued to represent the same Constituency till his death. The O'Conor Don represents Cathal of the Red Hand, brother of Roderick, last Milesian King of Ireland. *July* 26.

ORFORD, John, Esq., of Brookes Hall, Ipswich, Town Clerk of Ipswich, aged 57. Mr. Orford, who died at Nice, was admitted in 1847.

OVERTON, George, Esq., of Wotton Mount, Brecon, D.L., and J.P., Coroner for Glamorganshire, and formerly a Solicitor at

Merthyr Tydvil, aged 70. Mr. Overton, who was eldest son of George Overton, Esq., of Lanthetty Hall, Breconshire, had ceased to practice since 1854, He was a Deputy Lieutenant and Justice of the Peace for Breconshire, for which county he served the office of High Sheriff in 1877. *May* 1.

PALMER, Edward Orpen, Esq., Solicitor (Irel.), Killowen, Kenmare. *May* 12.

PICKETT, Henry, Esq., of The Lodge, Gatton Point, Redhill, and of London, Solicitor, aged 58. Mr. Pickett was admitted in 1848. *May* 2.

ROBERTS, John Galloway, Esq., of Burklyn Lodge, Fallowfield, Manchester, Solicitor in Manchester, aged 50. Admitted in 1856. *June* 4.

RYND, Henry M. Esq., Solicitor (Irel.), aged 28. Admitted in 1878. *July* 10.

SEED, Stephen, Esq., Crown Solicitor for Cos. Meath and Kildare, and for the Camp of the Curragh of Kildare. *May* 8.

SHANNON, James, of the King's Inns, Esq., Barrister-at-Law, aged 31. B.A., Trinity College, Dublin. Called in 1874. *May* 9.

SIDGREAVES, George, Esq., J.P., formerly Solicitor, Preston, aged 83. *July*.

SKIPPER, James Fawdington, of the Inner Temple, Esq., Barrister-at-Law, aged 29. Mr. Skipper, who was called to the Bar in 1879, was of St. John's College, Cambridge, B.A., 1876, and had been President of the Union at Cambridge. *June* 18.

SMITH, Hon. Sir John Lucie, Kt., C.M.G., Chief Justice of Jamaica, aged 56. Sir John, who was called to the English Bar by the Hon. Society of the Inner Temple, in 1849, was son of the late John Lucie Smith, Esq., LL.D., of Demerara. The late Chief Justice, according to the *Colonial Office List*, successively held the posts of Solicitor General of British Guiana, 1852-55, Attorney General, 1855-63, and Acting Chief Justice there 1863, and was promoted to be Chief Justice of Jamaica in 1869. He was created C.M.G. in 1869, and knighted in 1870. *July* 9.

SPINK, George Pool, Esq., Solicitor, Hull, aged 32. Admitted in 1872. *July* 5.

TAYLOR, George, Esq., of Beaucliffe, Alderly Edge, Solicitor and Town Clerk, Stalybridge. Admitted in 1841. *April* 7.

TOWNSEND, John Sealy, of the King's Inns, Esq., Barrister-at-Law. Mr. Townsend was called to the Irish Bar in 1834. *April* 27.

VANSTON, John Davis, Esq., of Hildon Park, Rathgar, Solicitor (Irel.), aged 61. . Admitted in 1845. *May* 14.

WALLACE, George, Esq., J.P., Solicitor and Notary Public, Fraserburgh, aged 69. Mr. Wallace, was a Banker as well as a Legal Practitioner in Fraserburgh, and was in the Commission of the Peace for Aberdeenshire. *May* 11.

WALLACE, Norris Edmund, B.A., of the King's Inns, Esq., Barrister-at-Law. Mr. Wallace, who died at Cape Town, South Africa, was son of Rev. Thomas Wallace, of Belfield, Dublin, and was called to the Irish Bar in 1874. He was B.A., of Trinity Collage, Dublin. *May* 19.

WHEELER, Thomas, Esq., LL.D., Q.C. (Co. Pal. Lanc.), Serjeant-at-Law, Judge of County Courts, aged 77. Mr. Serjt. Wheeler, who was called to the Outer Bar in 1846, received the silk of the County Palatine of Lancaster, and took the degree of the coif in 1861. He was of St. John's College, Cambridge, LL.B., First Class, Civil Law, 1846; LL.D., 1858. From 1860 to 1862 he filled the Judgeship of the Salford Hundred Court of Record; from 1862 to 1873 he was Judge of the Liverpool County Court Circuit, from which he was transferred to Marylebone. The late Serjeant, who was son of John Wheeler, Esq., of Manchester, was J.P. for Cos. Lancaster and Middlesex. *June* 17.

WILLIAMS, Stephen, Esq., Solicitor, aged 87. Admitted in 1817. *June* 28.

WILSON, Richard Munkhouse, Esq., Solicitor, Salisbury. Mr. Wilson, who was admitted in 1831, and was Coroner for Wilts, Registrar of the County Court, and a member of the Town Council of Salisbury, died very suddenly, while taking part in the recent Diocesan Conference. *April* 26.

WOOD, John Prescot, Esq., Solicitor, York. Mr. Wood, who was Coroner for York, was admitted in 1846. *July* 9.

WOODLOCK, William, Esq., M.A., Solicitor (Irel.), aged 81. Mr. Woodlock, who was of Trinity College, Dublin (B.A., 1821, M.A., 1825), and had filled the office of Filacer of the Irish Court of Equity Exchequer, died at Bruges. *May* 29.

Reviews of New Books.

The Law and Practice relating to the Administration of the Estates of Deceased Persons by the Chancery Division of the High Court of Justice, with an Appendix of Orders and Forms annotated by References to the Text. By W. GREGORY WALKER, B.A., and EDGAR J. ELGOOD, B.C.L., M.A., Barristers-at-Law. Stevens and Haynes. 1883.

Now that almost every department and even sub-department of the law has become the subject of many text-books, and writers who wish for a field all their own must in general look for it in provinces far out of the common track, it is not a little surprising that there should have hitherto been no treatise both brief and good on a matter of such practical moment as the Administration Action. Yet such, so far as we know, is really the fact. Of course there are excellent books which will serve the experienced lawyer as sufficient indices to the reported cases, and there are books large and expensive in which one may with pains discover almost all that can be known about the way in which law deals with a dead man's property: but the former are not readable, and are not meant to be readable; they are essentially books of reference; and in the latter, the comparatively few things that many people may want to know are too often buried away beneath a mass of obsolescent learning. A short book that might be read with profit was much wanted, and the book now before us meets the want.

It was begun by Mr. Gregory Walker, who, quitting the English Bar for that of New South Wales, left it to be finished by Mr. Elgood. This we learn from the Preface; certainly we should not have guessed for ourselves that the whole was not planned and executed by one and the same writer, and we have looked in vain for a breach of continuity. The scheme of the work is simple and rational, and an unusually well-made Table of Contents enables the reader readily to master its arrangement. In the main, of course, it deals with practice rather than substantive law; but the authors have understood, what is

too often forgotten, that all rules of practice are not of equal importance. Thus a proper perspective is obtained, the main outlines are brought prominently forward, while we see that details are details and exceptions are exceptions. This is no small merit, if a book is to be a book and not an index, for though it is generally but for some detail that an experienced lawyer refers to a text-book, still it is important even for him to see at once what place his detail fills in a connected scheme of the law, while to the student every text-book is worse than useless if the tithing of mint and cummin is represented as of just as much importance as the weightier matters of the law. The authors, too, have seen that our so-called "case law" is really not just a maze of decisions, but a connected body of doctrine which has been illustrated by decisions. This, of course, is not always quite true. Sometimes some parts of the law are in a mess, and then it is a text-writer's duty to say so, and to show where the solid ground leaves off and the quagmire begins. One very bad spot must be crossed by a writer on Administration, the confusion due to that absurd 10th section of the Judicature Act, 1875. Mr. Elgood, to whom, as we suppose, it fell to deal with this matter, has dealt with it carefully, and has shown skill and good sense in his treatment of the cases, already many, in which the meaning of that section has been considered. But, happily, the section is no fair specimen of the law, and in their statements of settled principles the authors are seen at their best. Also we are glad to say that they have had the wisdom not to incumber their work with useless antiquities. We confess to having approached a chapter headed, "Of the Order in which Assets are administered," with some fear lest a flood of ancient law would be let loose upon us about the priority of specialities and what not. It would have been extremely easy to let loose such a flood, and even to talk familiarly of statutes merchant and statutes staple; one only has to copy from classical books. The fear was groundless, for our authors take the sensible course of telling us where to look for the old law, and then dealing at length with what is now the only practical question, namely, how does the Court administer the assets of one who has died since the beginning of 1870? We have no hesitation in recommending this book, for, on the whole, it seems to us one of the best books of its kind that has lately been published.

The Rule Against Perpetuities. A Treatise on Remoteness in Limitation, with a chapter on Accumulation and the Thellusson Act. By REGINALD G. MARSDEN, of the Inner Temple, Barrister-at-Law. Stevens and Sons. 1883.

This is a good book on an important and somewhat singularly neglected subject, on which no serious treatise has appeared till now for something like forty years. In the rapid growth of case law it goes without saying that the earlier treatises are now of little value.

Not only is the subject chosen by Mr. Marsden one of difficulty, but it is one upon which questions arise with a greater frequency than is perhaps generally known. The learned author contrives to administer some shocks even to his legal readers. Among these we may count his reminder that a right of pre-emption of property in a lease exceeding twenty-one years is probably void, as offending against the rule as to Perpetuities (Marsden, p. 19), and that not a few powers and provisions usually contained in settlements narrowly escape being obnoxious thereto.

It is obvious that here are suggestions of rocks ahead for the most carefully drawn settlements. It is to be observed that the rule against Perpetuities is one of public policy, and is not founded on any statute. Like the fetter on anticipation in the case of married women, it is stated by the author to be "an invention of the Chancellors" (Marsden, p. 2). Mr. Marsden's statement is supported by the eminent authority of the late Master of the Rolls. Historically, however, it seems that a harder rule was adopted by the courts of Common Law than in Chancery. In *Scattergood* v. *Edge* (12 Mod., 287), Treby, C. J., after giving as the limit of executory devises, the period of lives in being, proceeds to say that "further they shall never go by my consent, let Chancery do as they please." With a natural affection for their offspring, the Courts have rejoiced to extend the doctrine; thus Lord Eldon, in *Ware* v. *Polhill* (11 Ves., 257), was inclined to extend it to make void a general power of sale, a course which would have seemed on the surface to be a *reductio ad absurdum* of the principle. Further, in dealing with cases of this class, the Courts have overlooked the salutary doctrine of endeavouring to effectuate the intention of the parties, *ut res magis valeat quam pereat*, and they hold, without regard to the actual facts of the case, that if a limitation could under any cir-

cumstances become void, it is so at once and *in toto*. In the case of the law against accumulations, on the contrary, which is a creation of statute, they hold a direction for accumulation, though exceeding the legal limit, to be good so far as it does not trespass against the rule, and bad only as to the excess.

Mr. Marsden is already favourably known as author of a work on the Law of Collisions at Sea, which was some time since noticed in this *Review*. The present volume, which, we must not omit to mention, has an excellent index, will add to his reputation, both as a writer of legal text books and as a lawyer.

Principles of Conveyancing: An Elementary Work for the use of Students. By. HENRY C. DEANE, of Lincoln's Inn, Barrister-at-Law. Second Edition. London: Stevens and Haynes. 1883.

Mr. Deane, by title and by preface, announces that his book, of which a second edition has just been published, is "purely elementary." Now, very possibly there are very many learned persons who would suppose it an easy enough matter to explain the first elements of that Real Property law with which they are well acquainted; but an attempt to write a first chapter would probably convince them that they were mistaken. In truth, we can hardly imagine a more difficult task than that which Mr. Deane has undertaken. Real Property law is, we take it, incomparably the hardest part of the law to explain to beginners, and all the changes which of late years have simplified the practice of conveyancers, are but so many new obstacles in the way of any one who is trying for the first time to seize the main principles. Unless the writer is very careful, and knows not only what to say, but also when to say it, the student's attention will be constantly called away from leading doctrines to little recent changes which without an historical context are absolutely unintelligible. So far as we have been able to examine Mr. Deane's book published but shortly before our going to press, he has done his work prudently and well, and has succeeded in placing himself at the proper stand-point, the stand-point of the beginner. He has skilfully introduced the very considerable modifications which have been rendered needful by the legislation of the last few years, and has shown that he can not only write a good text-book, but also make a good second edition

of it; and, in these days of Conveyancing Acts and Settled Land Acts, this is no small achievement. Many a good text-book has become a mere fortuitous concourse of observations, because its editors have not known when to be silent. Mr. Deane, however, has succeeded in working the new statutes into the web of the law, and has avoided the danger of exaggerating the importance of the last new bit of cobblers' work that it has pleased Parliament to perform. On the whole we doubt whether a student could do much better than take Mr. Deane for his guide, and we shall be surprised if this book does not become popular.

Just because it is likely to be popular, and therefore to be again edited, we will take some exception to the first chapter, "Of the Earlier Tenures of Land." Doubtless it is most difficult to bring within the compass of thirty pages even the briefest summary of what is known of our land law's earliest history, but still the attempt must be made, and Mr. Deane has evidently been at pains in this matter. In several respects he has improved on the orthodox generalities about the Feudal system which in many legal hand-books pass for history. But still he puts a little too much trust in old but not first-hand authorities. Now, Somner's book on Gavelkind for example, is not a first-hand authority for the eleventh century. He had at his command much scantier material than is now-a-days easily accessible, and all that is good in his book will be found much more accurately stated elsewhere. In a future edition Mr. Deane will do better in sending his readers to Kemble and Maurer, to Stubbs and Freeman, than to Somner and Sir Martin Wright. But this is a matter of comparatively small importance. When Mr. Deane gets a footing on the sure ground of statutes and reported cases, he shows that he understands his subject and can explain what he understands.

Best on Evidence. Seventh edition, By J. M. Lely, M.A., of the Inner Temple, Barrister-at-Law. Henry Sweet. 1883.

This is an age of criticism, and books which furnish materials for conducting inquiries, and sifting proofs of facts are no doubt in demand. To meet this demand, Mr. Lely has brought out the seventh edition of the late Mr. Best's work on the Principles of the Law of Evidence. The learned editor has

done his work very carefully, and with distinct success; he has preserved the general outlines prescribed by the author, but has cut down and pruned away much that was unnecessary, and has thus succeeded in presenting to the public a volume at once useful and convenient. Mr. Best and his subsequent editors have confined themselves to the principles upon which the Law of Evidence is based, and have left to other writers such as Greenleaf, Phillips, and Pitt Taylor, the practical illustrations of the subject. The scope of the present work is wider than that of Mr. Justice Stephen's valuable Digest of the Law of Evidence, for the former treats of evidence and proof in general (not only in England but foreign countries), whereas the latter deals only with the English law of judicial evidence, or the rules which guide the reception or rejection of evidence in our civil and criminal courts. The treatise under review discusses in different books or parts evidence and proof in general; the English law of evidence in general; the instruments of evidence; and, what is by far the most important topic, the rules regulating the admissibility of evidence; and it concludes with chapters on forensic practice and the examination of witnesses. In these days, when so much is said and written about the propriety of abolishing oaths and of using declarations or affirmations, we think Mr. Lely has done good service in drawing the attention of the profession to a small but not unimportant point—viz., the administering an affirmation or declaration to an infant of tender years in lieu of an oath. This point, it may be remarked, has, curiously enough, never been judicially decided; it has hitherto been the invariable practice to administer an oath to a child of tender years who has satisfied the Court that he understands its nature. Mr. Justice Stephen seems to think an infant might be allowed to affirm, and omits want of religious belief in a child as a ground of incompetency, while he also seems to hold that the words in 32 & 33 Vict., c. 68, s. 4, "objecting to take an oath, or being objected to as incompetent to take an oath," would apply to the case of a child, on the ground that "if a person who deliberately and advisedly rejects all belief in God and a future state is a competent witness, *à fortiori*, a child who has received no instruction on the subject must be competent also." But with this view Mr. Lely does not agree, and forcibly remarks that though the child cannot "object to" what it does not, *ex hypothesi*, know the nature of, and though the words "objected to" may

grammatically include the case of a child, yet they must from their collocation be restricted to the case of an adult. Though not persuaded that the point is free from doubt, our present impressions incline us to agree with Mr. Lely.

Digest of the Criminal Law (Crimes and Punishments). By SIR JAMES STEPHEN, D.C.L., K.C.S.I., one of the Judges of Her Majesty's High Court of Justice. Macmillan & Co. 1883.

Digest of the Law of Criminal Procedure. By SIR JAMES STEPHEN and HERBERT STEPHEN, LL.M., of the Inner Temple, Barrister-at-Law. Macmillan & Co. 1883.

These two remarkable works are deserving of far more space than we have at present at our disposal for noticing them. But we cannot pass them *sub silentio*, even for a short time, and therefore we think it best simply to note one or two points out of the many which the perusal of these most interesting and suggestive volumes cannot fail to raise in the minds of thoughtful students of the Science of Jurisprudence. And this the rather, because the object of the learned Judge seems not always to have been rightly apprehended in the very profession which he has so long adorned. We should have thought, for instance, that few things were more obvious than that Sir James Stephen has here attempted nothing more than a tentative work, a suggestion, in fact, as to what the law appears to be in the branches treated, and that he never professes to give a more authoritative statement that such *is* the law than may be warranted by the cases. It appears to us that it would have been difficult to have been more guarded in the deductions drawn from the enormous mass of decided cases which it was necessary to consult. The mode of treatment is in fact perfectly parallel, to our mind, with that adopted by the same author in drawing up his very valuable Digest of our existing Law of Copyright for the Royal Commission of which he was a member. And nothing can be more fair to the existing law, in either case, than the treatment which it receives at the hands of Sir James Stephen. He never says that he agrees with what may appear to him to be an obsolete or mischievous state of the law, but he states what his researches have led him to believe is the law, and leaves it to the ultimate action of the collective wisdom of the Nation, in Parliament assembled, to

modify and amend such law. Whether that wisdom will effect anything in the direction of the Criminal Code is now probably to be considered as one of those things relegated to a distant future. It may be that the "Papa Angelico" of Roman tradition will be wearing the Fisherman's ring before that day of Reform shall dawn for us; and then we ought hardly to be in want of any Criminal Code at all.

The entire subject of the two works now before us is of the highest importance alike to the scientific jurist, and to the practitioner. It is, indeed, hard to say which class should most heartily welcome these additions to the Legal literature of our country. They have, we may remark, an even wider range. From the conciseness and clearness of diction of which Sir James Stephen is such a master, his Digests are better calculated than any of the ordinary text-books for conveying to Continental jurists an accurate impression of the existing Criminal Law of England. This fact adds greatly to the interest with which we regard the several publications of the distinguished Judge, who had done his country so much good service long before his elevation to the Bench, that his name must always be associated with the advance of the highest forms of Juridical culture, not only in Great Britain, but also in the Far East, and wheresoever the science of Jurisprudence is held in the honour which is its due, and which it will ever receive in the pages of this *Review*.

Smaller Books and Pamphlets.

Mr. F. G. Hindle, Clerk to the Darwen Justices, in his pamphlet on the *Legal Status of Licensed Victuallers* (Stevens and Sons, 1883), has taken occasion from what may well be, in its way, called the *cause célèbre* of *Kay* v. *the Justices of Over Darwen*, of which he gives a very full and interesting account from a contemporary report, to expound the present state of the law on the whole subject, and to discuss the principal conflicting views which have been held either by Justices in Brewster Sessions, or by the Judges of the High Court. The result is a very handy little book, likely to be useful to Magistrates and their Clerks.

Quarterly Digest

OF

ALL REPORTED CASES.

TABLE OF CASES

Comprised in the Quarterly Digests for November, 1882, *and February, May and August,* 1883.

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ALL REPORTED CASES,

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Law Reports, Law Journal Reports, Law Times Reports, and Weekly Reporter,

FOR MAY, JUNE, AND JULY, 1883.

By HENRY M. KEARY, of Lincoln's Inn, Barrister-at-Law.

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(iii.) **C. A.**—*Construction of Contract—Right to Compensation for Delay.*—Decision of Q.B. Div. (see iii., p. 54) affirmed.—*Lawson* v. *Wallesey Local Board*, 48 L.T. 54.

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(v.) **C. A.**—*Sale of Goods—Payment against Bills of Lading—Tender of two out of three parts.* Plaintiffs sold to defendants goods, the price to include cost of freight and insurance to P., and payment to be made in London in exchange for bills of lading. The cargo was shipped under a bill of lading drawn in four parts. Plaintiffs tendered to defendants in London two parts of the bill of lading duly endorsed, the third being retained by the shipper and the fourth by the captain; and defendants refused the tender, on the ground that they were entitled to three parts: *Held* that the tender was good.—*Sanders* v. *Maclean*, 31 W.R. 698.

Bankruptcy:—

(i.) **C. A.**—*Act of Bankruptcy—Assignment of Whole Property to Secure existing Debt—Further Advance—Bankruptcy Act*, 1869, *s.* 6 (2).—In order that a deed assigning the whole of a debtor's property to secure an existing debt may not be fraudulent and an act of bankruptcy within sec. 6, sub-sec. 2, of Bankruptcy Act, on the ground that the assignee agreed to make further advances, it is sufficient if there is a *bonâ fide* promise to make the advances, though the agreement be not technically binding at law or in equity.—*Ex parte Wilkinson, Re Berry*, L.R. 22 Ch. D. 788; 48 L.T. 495; 31 W.R. 649.

(ii.) **C. A.**—*Adjudication—Prior Scotch Sequestration.*—When a debtor has been sequestrated in Scotland, and has no assets in England, and the sequestration is still open, the Court will not adjudicate him bankrupt in England, though it has jurisdiction to do so.—*Ex parte Robinson, Re Robinson*, L.R. 22 Ch. D. 816; 48 L.T. 501; 31 W.R. 553.

(iii.) **C. A.**—*Bankruptcy before* 1869—*Contingent Debt—Non-trader*—12 & 13 *Vict.*, *c.* 106, *ss.* 177, 178; 24 & 25 *Vict.*, *c.* 134, *s.* 161.—Decision of Kay, J. (see vii., p. 2) affirmed.—*Robinson* v. *Ommaney*, L.R. 23 Ch. D 285; 52 L.J. Ch. 440; 31 W.R. 525.

(iv.) **C. A.**—*Composition — Examination of Creditor — Jurisdiction — Bankruptcy Act*, 1869, s. 96.—Decision of C. J. B. (see iii., p. 55) reversed.—*Ex parte Willey, Re Wright*, L.R. 23 Ch. D. 118; 52 L.J. Ch. 546; 48 L.T. 380; 31 W.R. 553.

(v.) **C. A.**—*Debtor's Summons—Creditor's Meeting—Composition—Bankruptcy Act*, 1869, *s.* 7.—Decision of C. J. B. (see i., p. 56) affirmed on the ground that, as all the creditors had not assented to the resolution, there was no binding agreement between the debtors and their creditors. —*Ex parte Foster, Re Foster*, L.R. 22 Ch. D. 797; 48 L.T. 497; 31 W.R. 774.

(vi.) **C. A.**—*Equitable Assignment of Future Receipts of Business—Rights of Trustee—Bankruptcy Act*, 1869, *s.* 11.—An assignment by a trader of future receipts of his business, though made for value, is inoperative as against the title of his trustee in bankruptcy so far as regards receipts accruing after the commencement of the bankruptcy.—*Ex parte Nicholls, Re Jones*, L.R. 22 Ch. D. 782; 48 L.T. 492; 31 W.R. 661.

(vii.) **C. A.**—*Fraudulent Preference—Bankruptcy Act*, 1869, *s.* 92.—In determining whether a transaction amounts to fraudulent preference, the Court ought to have regard simply to the statutory definition contained in sec. 92 of Bankruptcy Act.—*Ex parte Griffith, Re Wilcoxson*, L.R. 23 Ch. D. 69; 48 L.T. 450.

(viii.) **C. J. B.**—*Fraudulent Preference—Bill of Sale—Past Debt—Bankruptcy Act*, 1869, *s.* 92—*Trader.*—A judgment creditor who had issued execution agreed to make a substantial advance to the debtor, on the understanding that it should be applied in paying of a debt to bankers, who were pressing for payment, and a bill of sale over the whole of the debtor's property was given to the creditor to secure his execution debt and the advance. Two days afterwards possession was taken under the bill of sale, and the debtor filed a liquidation petition. The fresh advance had been applied in paying the banker's debt and the solicitors: *Held* that the bill of sale and the payment to the solicitors were void, but the payment to the bankers was good: *Held*, also, that the taking in horses of friends and training them is not sufficient to constitute a former trader.—*Ex parte Clater, Re Wilkinson*, 48 L.T. 648.

(i.) **C. A.**—*Lease—Disclaimer—Leave of Court—Bankruptcy Rules*, 1871, *r.* 28.—When a trustee in bankruptcy applies for leave to disclaim a lease, the Court will not order any compensation to be paid to the landlord unless the trustee has kept him out of possession, and the trustee's occupation has been beneficial to the bankrupt's estate.—*Ex parte Izard, Re Bushell* (2), L.R. 23 Ch. D. 115; 48 L.T. 562.

(ii.) **Q. B. Div.**—*Lease—Notice to Trustee to Disclaim—Assignment to Pauper—Liability for Rent.*—A trustee in bankruptcy in possession of leasehold premises of the bankrupt, and who, after notice from the landlord to disclaim, assigns the tenancy to a pauper, is not liable to pay rent after the date of assignment, although the jury find that the assignment was a sham transaction.—*Hopkinson* v. *Lovering*, L.R. 11 Q.B.D. 92; 52 L.J. Q.B. 391.

(iii.) **C. A.**—*Order and Disposition—Hiring Furniture—Bankruptcy Act*, 1869, *s.* 15 (5).—Decision of C. J. B. (see i., p. 57) affirmed.—*Ex parte Brooks, Re Fowler*, L.R. 23 Ch. D. 261; 48 L.T. 453.

(iv.) **C. A.**—*Scheme of Settlement—Annulment of Adjudication—Release of Bankrupt.*—Decision of Q.B. Div. (see i., p. 25) affirmed.—*Gilbey* v. *Jeffries*, 48 L.T. 699.

(v.) **C. A.** — *Stoppage in Transitu — Goods in Warehouse.* — Where goods have been delivered to a railway company for conveyance and delivery to the purchaser, and the company on their arrival at their destination warehouse them and give notice to the purchaser that they hold the goods as warehousemen at consignee's risk, the vendor has no right of stoppage in transitu, as the goods are in the constructive possession of the purchaser.—*Kendall* v. *Marshall*, 52 L.J. Q.B. 313; 31 W.R. 597.

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(vi.) **Q. B. Div.**—*Bank of England Note—Material Alteration—Transfer for Value*—45 *&* 46 *Vict.*, *c.* 61, *ss.* 64, 89.—The doctrine as to notice of infirmity in bills and notes does not apply to a forged Bank of England note. Section 64 of Bills of Exchange Act, 1882, is not retrospective, nor does it include Bank of England notes within its operation.—*Leeds Bank* v. *Walker*, L.R. 11 Q.B.D. 84.

Bill of Sale:—

(vii.) **Q. B. Div.**—*Form of Bill*—45 *&* 46 *Vict.*, *c.* 43, *ss.* 7, 9.—Though a bill of sale need not follow literally the form given in the schedule to the Amendment Act, 1882, it must do so substantially; and if it differs in material particulars therefrom will be void.—*Davis* v. *Burton*, L.R. 10 Q.B.D. 414; 52 L.J. Q.B. 334; 48 L.T. 433; 31 W.R. 523.

(viii.) **C. A.**—*Grantee Enabled to Seize Future Property—Consideration—Previous Agreement.*—A bill of sale enabling the grantee to seize all existing property of the grantor and all property which he may acquire by means of the money advanced to him, is not void as necessarily defeating or delaying creditors. In order to support a bill of sale given in pursuance of a previous agreement the *onus* is on the grantee to show the *bonâ fides* of the agreement and to explain the reason of the delay.—*Ex parte Hauxwell, Re Hemingway*, 48 L.T. 742; 31 W.R. 711.

(ix.) **C. A.**—*Non-Registration—Bankruptcy—Execution*—41 *&* 42 *Vict.*, *c.* 31, *s.* 8.—The taking in execution of goods comprised in an unregistered bill of sale does not, under sec. 8 of Bills of Sale Act, 1878, avoid the bill of sale altogether, but only to the extent necessary to let in the

claim of the execution creditor; and therefore where an execution is avoided by the relation back of the title of the trustee in bankruptcy, the title of the holder of the bill of sale continues good as against the trustee.—*Ex parte Blaiberg, Re Toomer*, L.R. 23 Ch. D. 254; 52 L.J. Ch. 461.

(i.) **Ch. Div. F. J.**—*Registration—Bankruptcy—Order and Disposition—41 & 42 Vict., c. 31, s. 20; 45 & 46 Vict., c. 43, ss. 3, 15.*—The combined effect of secs. 3, 15 of Bills of Sale Amendment Act, 1882, is to repeal sec. 20 of the Act of 1878, only so far as relates to bills of sale which may be given by way of security for the payment of money.—*Swift* v. *Pannell*, 48 L.T. 351; 31 W.R. 543.

(ii.) **Q. B. Div.**—*Registration—Description of Grantor's Occupation—41 & 42 Vict., c. 31, s. 10 (2).*—In the affidavit filed on the registration of a bill of sale, the grantor, E. R., was described as "carrying on business as &c., under the style of the L. Supply Association, E. R., general manager." The grantor had formerly carried on the business as sole owner, but a few months before the execution of the bill of sale he ceased to have any share in the business, but remained a paid manager of it: *Held* that the occupation of the grantor was incorrectly described. —*Cooper* v. *Davis*, 31 W.R. 721.

(iii.) **Q. B. Div.**—*Renewal of Registration—29 & 30 Vict., c. 96, s. 4; 41 & 42 Vict., c. 31, s. 14.*—A bill of sale void for want of renewal of registration at the commencement of Bills of Sale Act, 1878, cannot be renewed under sec. 14 of that Act.—*Askew* v. *Lewis*, L.R. 10 Q B.D. 477; 48 L.T. 534; 31 W.R. 567.

Building Society:—

(iv.) **Ch. Div. Pollock, B.**—*Borrowing Powers—Redemption—Premium—Interest.*—A building society may, on making an advance to a borrowing member, charge a premium on the amount of the advance proportioned to the intended character of the loan, and require interest to be paid both on the premium and the sum advanced, and require payment of the entire premium, though the loan be repaid at an earlier date than that originally intended.—*Harvey* v. *Municipal Building Society*, 52 L.J. Ch. 349.

(v.) **Q. B. Div.**—*Power to Gain Minerals—Association for Gain—Companies Act*, 1862, s. 4.—The rules of a building society provided that upon conveyance of land by the society to its members, the minerals should be reserved to the trustees of the society, who should have power to sell, lease, get, or win the coals in such manner as they should think best: *Held* that the society was an association for gain within sec. 4 of Companies Act, 1862.—*Crowther* v. *Thorley*, 48 L.T. 644; 31 W.R. 564.

(vi.) **H. L.**—*Winding-up—Advanced Member—Liability—37 & 38 Vict., c. 42, ss. 14, 16.*—The rules of a building society, registered under the Act of 1874, provided that the shares were to be limited to £25, that an advanced member should pay up his advances by monthly instalments on his shares, with interest at 5 per cent., that members could withdraw on giving a month's notice, and that a borrowing member was on withdrawal to pay up his whole debt, interest, and penalties remaining due. A. took shares for the purpose of obtaining an advance, and executed a bond in the common form as surety, and the society granted a back-letter, to the effect that they agreed not to enforce the bond, so long as the sums due upon the shares were regularly paid. A. regularly paid

the amounts due, and in February, 1880, the society was ordered to be wound-up in consequence of losses having been incurred. There were no outside creditors: *Held* that A. on giving the proper notice, was entitled to withdraw and be discharged of his bond on paying the difference between his advance and instalments, with interest added thereon as against excess of interest which he had been charged.—*Brownlie* v *Russell*, L.R. 8 App. 235.

Burial Ground:—

(i.) **Q. B. Div.**—*Burial Board—Appointment of—18 & 19 Vict., c. 128, s. 12.*—*Held* that the powers given by sec. 12 of 18 & 19 Vict., c. 128, did not apply to a district forming part of an area over which a burial board already exercised jurisdiction.—*Regina* v. *Tonbridge Overseers*, L.R. 11. Q.B. D. 135.

Charity :—

(ii.) **Ch. Div. C. J.**—*Appointment of Income Among New Parishes—8 & 9 Vict., c. 70, s. 22—Jurisdiction to Discharge Order.*—The Court has jurisdiction to discharge an order for appointment of the income of a charity made under sec. 22 of 8 & 9 Vict., c. 70, and to make a fresh order thereunder.—*Re The Campden Charities*, 48 L.T. 521; 31 W.R. 741.

Church :—

(iii.) **Q. B. Div.**—*Donative—Transfer of Advowson during Vacancy—Nomination by Patron of Self.*—The patron of a donative benefice, being a qualified clergyman and officiating curate of the church, by deed poll executed during a vacancy in the benefice, granted the advowson to a trustee in trust to present to whomsoever the patron should nominate, and then by word of mouth nominated himself, and the trustee granted the office of rector to him: *Held* that the transaction was valid.—*Lowe* v. *Bishop of Chester*, L.R. 10 Q.B.D. 407; 48 L.T. 790.

Colonial Law:

(iv.) **P. C.**—*Law of Cape of Good Hope—Construction of Contract—Colonial Act 11 of 1863, s. 2.*—A contract between defendant and E. purported to be one of guarantee or agency, but the effect of the transaction was to give E. every right which a vendor could legally claim, and to confer on defendant every right which a purchaser could legally demand: *Held* that defendant was liable to pay duty on his purchase-money under Act 11 of 1863, sec. 2.—*Hutton* v. *Lippert*, L.R. 8 App. 309.

(v.) **P. C.**—*Law of Griqualand West—Indefeasible British Title—Conditions of Grant.* *Held* that plaintiff, who had obtained a judgment from the Land Court of Griqualand West in respect of certain lands, was entitled to the grant of an indefeasible British title thereto under the seal of the province in confirmation of the Presidential Grant of 3rd December, 1862; and was not compellable to accept a title containing conditions not expressed in the grant and not shown to be incidents implied therein, nor to be duties and regulations since established concerning lands granted upon like conditions. *Webb* v. *Wright*, L.R. 8 App. 318.

(vi.) **P. C.**—*Law of Jersey—Criminal Case—Special Leave to Appeal.*—An order of Court directing a defendant to plead to an information for libel, and directing that having pleaded he should be tried without a jury, is not a definitive sentence within the meaning of the Order in Council of 13th May, 1572. Leave to appeal therefrom refused.—*Esnouf* v. *Attorney-General for Jersey*, L.R. 8 App. 304; 48 L.T. 321.

(i.) **P. C.**—*Law of Mauritius—Tierce Opposition—Civil Procedure Code, Art.* 474.—Where accounts between a firm and one of its members had been settled by a reference and award made thereunder : *Held* that judgment creditors of the firm could not, without alleging fraud or collusion, be admitted to impeach the award by way of tierce opposition or otherwise.—*Martin* v. *Boulanger*, L.R. 8 App. 296.

(ii.) **P. C.**—*Law of New South Wales—Trespass—Mortgagor in Possession—Default in Payment on Demand—Illegal Seizure—Damages.*—Where by the terms of a mortgage deed plaintiff was to remain in possession on his own account and manage the property until he should make default in payment of the mortgage money upon demand in writing; and such demand was made on plaintiff's wife, during his absence, by a person representing himself as defendant's agent, and upon non-payment defendant entered : *Held* that such non-payment before plaintiff could enquire into the truth of the alleged agency was not a default, and that defendant was liable in substantial damages.—*Moore* v. *Shelley*, L.R. 8 App. 285.

(iii.) **P. C.**—*Law of South Australia—Unregistered Deed—Equitable Right—Colonial Act* 22 *of* 1861, *s.* 39.—Although an unregistered deed is not effectual to pass any interest in land under sec. 39 of Act 22 of 1861, it is effectual to pass an equitable right to set aside a certificate of title relating thereto which has been obtained by fraud.—*McEllister* v. *Biggs*, L.R. 8 App. 314.

Company :—

(iv.) **Q. B. Div.**—*Default in forwarding List of Members to Registrar—Continuing Offence—Companies Act*, 1862, *ss.* 26, 27.—A company made default in sending a list of its members to the registrar in the years 1877 and 1879 to 1882 inclusive : *Held* that it was a continuing offence and penalties could be recovered for default made in each year for a period not exceeding six months.—*Regina* v. *Catholic Life and Fire Assurance Institution*, 48 L.T. 675.

(v.) **C. A.**—*Directors—Appointment of—Interference of Court.*—In an action by some shareholders of a company on behalf of themselves and all others, the Court refused to interfere to force on the company certain persons as directors, whose position as such was questioned by a resolution of the company, although the resolution was not legally effectual to remove them.—*Harben* v *Phillips*, 48 L.T. 74.

(vi.) **Q. B. Div.**—*Dock Company—Bye-Law—Validity*—10 *&* 11 *Vict.*, *c.* 27, *s.* 83.—A dock company, whose special Act incorporated the Harbours, Docks, &c., Clauses Act, 1847, made a bye-law excluding from their premises or any vessel therein certain labourers called lumpers, unless especially authorised by them : *Held* that the bye-law was in excess of the powers conferred upon the company by section 83 of the Act, and, therefore invalid.—*Dick* v. *Badart*, L.R. 10 Q.B.D. 387 ; 48 L.T. 391.

(vii.) **C. A.**—*Malicious Presentation of Petition to Wind-up—Cause of Action.*—An action will lie without proof of special damage, for maliciously and without reasonable and probable cause presenting a petition to wind-up a company.—*Quartz Hill Gold Mining Co.* v. *Eyre*, 31 W.R. 668.

(viii.) **Ch. Div. P. J.**—*Misrepresentation in Prospectus—Notice to Shareholder—Proof.*—When a company's articles provide that notices, when duly posted to shareholders, shall be deemed good notice to them without proof of actual delivery, this does not apply to a special notice that the prospectus contains such inaccuracies as to amount to a misrepresentation.—*Re London and Staffordshire Fire Insurance Co.*, 31 W.R. 781.

(i.) **Ch. Div. F. J.** *Railway Company—Statute—Revenue Charge—Remuneration of Director—Companies Clauses Act,* 1845, *ss.* 67, 91.—The purchase-money for a railway undertaking transferred by statute was distributable among debenture holders and shareholders: *Held* that remuneration to directors for past services was a revenue charge. Under the Companies Clauses Act, 1845, a vote remunerating directors can only be passed at a meeting when such vote has been specified as an object in the advertisement convening it.—*Hutton* v. *West Cork Rail. Co.,* 52 L.J. Ch. 377; 48 L.T. 626; 31 W.R. 542.

(ii.) **Ch. Div. C. J.**—*Reduction of Capital—Advertisement of Registration—30 & 31 Vict., c.* 131, *s.* 15.—Where an order is made confirming the reduction of capital of a company, the advertisement of the registration of the order and of the minute mentioned in sec. 15 of Companies Act, 1867, cannot be dispensed with.—*Re London Steamboat Co.,* 31 W.R. 781.

(iii.) **Ch. Div. F. J.**—*Reduction of Capital—Title of Petition.*—The proper mode of intituling a petition for reduction of a company's capital is "In the Matter of the Companies Acts, 1867 and 1877."—*Re Société Francaise des Asphaltes,* 48 L.T. 410.

(iv.) **Ch. Div. C. J.**—*Winding-up—Deficient Assets—Costs of Litigation—Priority.*—In the winding-up of a company in which costs had been incurred on various summonses, the assets were insufficient to meet such costs, and costs of the liquidator in realising the assets: *Held* that the liquidator's costs of realisation were to be paid first, and then costs ordered to be paid out of the assets on a summons by the official liquidator, costs paid by the liquidator under an order made on another summons, the liquidator's own costs thereon, and his general cost of the liquidation, all these costs ranking together and being payable rateably.—*Re Dronfield Silkstone Coal Co.,* 31 W.R. 671.

(v.) **Ch. Div. F. J.**—*Winding-up—Jurisdiction—Adjustment of Rights of Contributories—Companies Act,* 1862, *s.* 102.—Under sec. 102 of Companies Act, 1862, the Court can only adjust the rights of contributories, *inter se,* as contributories.—*Ex parte Goodson, Re Alexandra Palace Co.,* L.R. 23 Ch. D. 297; 52 L.J. Ch. 428; 48 L.T. 424; 31 W.R. 808.

(vi.) **Ch. Div. K. J.**—*Winding-up—Payment of Rates.*—To entitle a rating authority to payment in full of rates on property of a company in liquidation, made subsequently to the commencement of the winding-up, it must be shown that there has been an actual beneficial occupation or enjoyment of the property by the liquidator on behalf of the company.—*Re Watson, Kipling & Co.,* 52 L J. Ch. 473; 31 W.R. 574.

(vii.) **Ch. Div. V. C. B.**—*Winding-up—Petitioning Creditor's Debt—Lands taken Compulsorily—Unpaid Vendor.*—Lands were taken by a company under its compulsory powers, and the amount of compensation fixed by an award under the Lands Clauses Act, 1845, but the title was not finally accepted nor the conveyance executed: *Held* that the unpaid vendors were not creditors of the company so as to entitle them to present a winding-up petition.—*Ex parte Lister, Re Milford Docks Co.,* L.R. 23 Ch. D. 292; 48 L.T. 560; 31 W.R. 715.

(viii.) **C. A.**—*Winding-up—Disputed Debt—Dismissal of Petition.*—Where a petition was presented to wind-up a company by a creditor for a small amount, whose debt was disputed, and there was no evidence beyond the statutory affidavit of the petitioner that the company was insolvent, the Court dismissed the petition with costs.—*Re Gold Hill Mines,* L.R. 23 Ch. D. 210.

(i.) **Ch. Div. C. J.**—*Winding-up—Prosecution of Officer by Liquidator—Companies Act*, 1862, *s.* 167.—The liquidator of a company, which was being wound-up under supervision presented a petition for a direction under sec. 167 of Companies Act, 1862, for a direction to prosecute certain officers of the company. His affidavit in support stated that he was advised and believed that a prosecution would probably result in a conviction. The application was opposed by two-thirds of the creditors: *Held* that it did not sufficiently appear within sec. 167, that an offence had been committed, and that as the costs of the prosecution if authorised would be paid out of the creditor's moneys, the application ought to be refused. — *Re Northern Counties Bank*, 31 W.R. 546.

Compensation for Loss of Office:—

(ii.) **Q. B. Div.**—*Superannuation of Prison Officer—Liability of County for*—40 & 41 *Vict.*, *c.* 21, *s.* 36.—The last paragraph of sec. 36 of Prisons Act, 1877, directing the apportionment of any annuity granted under the section, between the county rates and funds provided by Parliament, applies to all payments referred to in the section, including a special compensation allowance made for the purpose of facilitating improvements in the Prisons Department.—*Regina* v. *Middlesex Justices*, 48 L.T. 480.

Copyright:—

(iii.) **Q. B. Div.**—*Design—Registration*—5 *&* 6 *Vict.*, *c.* 100, *ss.* 3, 4.—A butter dish consisting of a dish and a cover is one article of manufacture within the Copyright (Designs) Act, 1842, and it is sufficient for the purposes of the Act to stamp the registration mark upon the dish alone, though the entire design be upon the cover.—*Fielding* v. *Hawley*, 48 L.T. 639.

(iv.) **C. A.**—*Musical Composition—Sole Liberty of Performance—Public Place*—5 *&* 6 *Vict.*, *c.* 45, *s.* 20.—Decision of Q. B. Div. (see v., p. 6) affirmed.—*Wall* v. *Taylor*; *Wall* v. *Martin*, L.R. 11 Q.B.D. 102; 31 W.R. 712.

Crimes and Offences:—

(v.) **C. C. R.**—*Bigamy—Evidence*—24 *&* 25 *Vict.*, *c.* 100, *s.* 57.—It was proved that prisoner had married W. in 1865, and lived with her after the marriage, but for how long was not known, and that in 1882 W. being still alive, he had gone through the form of marriage with another woman. There was no evidence as to when the prisoner and W. last saw each other: *Held* that he was rightfully convicted of bigamy.—*Regina* v. *Jones*, L.R. 11 Q.B.D. 118; 48 L.T. 768; 31 W.R. 800.

(vi.) **Q. B. Div.**—*Blasphemous Libel.*—A blasphemous libel does not consist in an honest denial of the truths of the Christian religion, but in a wilful intention to pervert, insult and mislead others by means of licentious and contumelious abuse applied to sacred subjects.—*Regina* v. *Ramsay & Foote*, 48 L.T. 733.

(vii.) **Q. B. Div.**—*Distress Damage feasant—Impounding on Premises—Tender of Damages.*—If a person distrains cattle damage feasant, and impounds them on his own premises, and the owner tenders the amount of damage as soon as he is able to do, the tender is not too late, and if it is refused and the owner pays a larger sum demanded, under protest, he can recover the difference between the amount of his tender, if sufficient, and the amount paid.—*Green* v. *Duckett*, 52 L.J. Q.B. 435; 48 L.T. 677; 31 W.R. 607.

(i.) **Q. B. Div.**—*Extradition—Jurisdiction of Magistrate—Evidence—33 & 34 Vict., c. 52, ss. 9, 10.*—Where a fugitive criminal is brought before a police magistrate under the provisions of the Extradition Acts, and the case is one within his jurisdiction, if there be any evidence to support his decision, that decision is conclusive, and the High Court cannot interfere with it.—*Regina* v. *Maurer*, L.R. 10 Q.B.D. 513; *Ex parte Maurer*, 31 W.R. 609.

(ii.) **Q. B. Div.**—*Larceny—Water stored in Pipe.*—Water stored in a pipe is a subject of larceny at common law.—*Ferens* v. *O'Brien*, L.R. 11 Q.B.D. 21; 52 L.J. M.C. 70; 31 W.R. 643.

(iii.) **Q. B. Div.**—*Maintenance—Common Interest.*—Plaintiff having sat and voted as a member of Parliament without having made and subscribed the oath appointed by sec. 5 of 29 & 30 Vict., c. 19, defendant, a member of Parliament, procured C. to sue plaintiff for the penalty to which he was liable under the section; and gave C. a bond of indemnity against all costs he might incur in the action. It was afterwards decided that the action would not lie on behalf of a common informer. In an action by plaintiff against defendant for maintenance: *Held* that defendant and C. had no common interest in the result of the action, and therefore the action for maintenance was maintainable.—*Bradlaugh* v. *Newdegate*, L.R. 11 Q.B.D. 1; 52 L.J. Q.B. 454; 31 W R. 792.

(iv.) **Q. B. Div.**—*Malicious Prosecution—Reasonable and Probable Cause—Onus Probandi.*—In an action for malicious prosecution it lies on defendant to prove the facts which the jury have to find with a view to the decision of the judge in his favour on the question of reasonable and probable cause.—*Abrath* v. *North-Eastern Rail. Co.*, L.R. 11 Q.B.D. 79; 52 L.J. Q.B. 352.

(v.) **H. L.**—*Parliamentary Oath—Right to Affirm—Penalty—Informer—29 Vict., c. 19.*—A penalty incurred under sec. 5 of Parliamentary Oaths Act, 1866, cannot be recovered in an action by a common informer.—*Bradlaugh* v. *Clarke*, 48 L.T. 681; 31 W.R. 677.

Debtor and Creditor :—

(vi.) **Q. B. Div.**—*Accord—Agreement to accept less Sum—Payment to Nominee.*—An agreement by a debtor to pay to the creditor, or his nominee, a less sum than the debt payable to the creditor is a sufficient consideration for an agreement by the creditor not to take further proceedings.—*Beer* v. *Foakes*, 52 L.J. Q.B. 426.

(vii.) **Ch. Div. P. B.**—*Acknowledgment—Statute of Limitations.*—A debtor wrote to his creditor, "I thank you for your very kind intentions to give up the rent of T. next Christmas, but I am happy to say that at that time both principal and interest will have been paid in full": *Held* an unconditional acknowledgment of the debt sufficient to take the case out of the Statute of Limitations.—*Green* v. *Humphreys*, L.R. 23 Ch. D. 207; 48 L.T. 479.

(viii.) **Ch. Div. K. J.**—*Defaulting Trustee—Attachment—Debtors' Acts, 1869, s. 4; 1878, s. 1.*—It is immaterial that a defaulting trustee against whom an attachment is sought to be obtained under the Debtors' Acts, 1869 and 1878, is unable to pay the moneys in respect of which he is in default, if the Court is of opinion that his breach of trust is of such a character as to constitute a fraud.—*Doodson* v. *Turner*, 48 L.T. 760.

(xi.) **Ch. Div. N. J.**—*Fraudulent Conveyance—13 Eliz., c. 5—Laches.*—A creditor may bring an action to set aside a deed under 13 Eliz., c. 5, at any time within the period allowed by the Statute of Limitations for the recovery of his debt.—*Three Towns Banking Co.* v. *Maddever*, 31 W.R. 720.

(i.) **C. A.**—*Illegal Consideration—Compounding Felony.*—In order to render illegal the receipt of securities by a creditor from his debtor, where the debt has been contracted under circumstances which might render the debtor liable to criminal proceedings, it is not enough to show that the creditor was thereby induced to abstain from prosecuting.—*Flower* v. *Sadler*, L.R. 10 Q.B.D. 572.

(ii.) **Q. B. Div.**—*Promissory Note—Payable on Demand—Liability to Pay at Future Date—Consideration.*—The existence of an agreement by which A. has undertaken, for good consideration, to pay B. a sum of money at a future date, is not a good consideration for a promissory note for the same sum given by A. to B., and payable on demand.—*Stott* v. *Fairlamb*, 52 L.J. Q.B. 420; 48 L.T. 574.

Defamation :—

(iii.) **Q. B. Div.**—*Libel—Privilege—Publication by Mistake.*—A communication which, if made to the person to whom it was intended to be made, would be privileged, is privileged though made to another person through a *bonâ fide* mistake. —*Tompson* v. *Dashwood*, L.R. 11 Q.B.D. 43; 52 L.J. Q.B. 425.

(iv.) **C. A.**—*Slander—Special Damage—Remoteness.*—Plaintiff in an action for damages for slander for words not in themselves actionable spoken by defendant, alleged that there was a proposal to alter the rules of a club for which plaintiff had been rejected, as to the election of members, and that defendant falsely and maliciously spoke the words complained of by which he induced a majority of the members to retain certain regulations and thereby prevented plaintiff from again seeking election at the club: *Held* that no cause of action was disclosed.—*Chamberlain* v. *Boyd*, 52 L.J. Q.B. 277; 48 L.T. 328; 31 W.R. 572.

Easement :—

(v.) **C. A.**—*Right of Drainage through adjoining Land—Extent of Easement.*—The owner of two adjoining properties, A. and B., laid down a four-inch pipe to carry surface water from A. to a main sewer, and which pipe passed under B. The two properties were sold to different owners: *Held* that the owner of A. had no right to send sewage through the pipe under B., though the pipe contained a socket joint which might have been intended to make a connection for that purpose.—*Watson* v. *Troughton*, 48 L.T. 508.

Ecclesiastical Law :—

(vi.) **P. D. A. Div.**—*Custody of Clerk for Contempt—Deprivation—Satisfaction of Contempt*—53 *Geo. III.*, s. 127; 37 & 38 *Vict.*, c. 85, s. 13.—A monition and prohibition under the Public Worship Regulation Act having been issued against the rector of a parish church, which he had disobeyed, he was in March, 1881, taken into custody under a writ *de contumace capiendo*. He still remained in custody in August, 1882, and by operation of the Act, ceased to be rector of the parish: *Held*, on the application of the bishop of the diocese, that defendant had satisfied his contempt within the meaning of 53 Geo. III., c. 127, and that a writ of deliverance for his discharge ought to issue.—*Dean* v. *Green*, L.R. 10 Q.B.D. 79.

(vii.) **Q. B. Div.**—*New Parish—Right to Solemnize Marriage*—6 & 7 *Vict.*, c. 37; 19 & 20 *Vict.*, c. 104, ss. 14, 15.—The publication of banns and the solemization of marriage are "ecclesiastical purposes" within sec.

14 of 19 & 20 Vict., c. 104; and where a district becomes a separate and distinct parish for ecclesiastical purposes, the incumbent thereof has the exclusive right of solemnizing marriages in the case of persons resident in his parish, and of receiving the fees for such marriages.—*Fuller* v. *Alford*, L.R. 10 Q.B.D. 418; 52 L.J. Q.B. 265; 48 L.T. 431; 31 W.R. 522.

Election :—

(i.) **Q. B. Div.**—*Municipal Election—Corrupt Practice—Petition—Amendment—45 & 46 Vict., c. 50, ss. 88, 100.*—A petition against a town councillor cannot, after the expiration of the twenty-one days limited by sec. 88 of Municipal Corporations Act, 1882, for its presentation, be amended by introducing a substantially new charge.—*Clark* v. *Wallond*, 52 L.J. Q.B. 321; 31 W.R. 551; *Clark* v. *Lowley*, 48 L.T. 762.

Evidence :—

(ii.) **Ch. Div. K. J.**—*Illegitimacy—Non-access of Husband and Wife.*—A wife was deserted by her husband, and went to live with another man, and while living with him had children: *Held* that the legal presumption that these children were legitimate was rebutted by the facts.—*Hawes* v. *Draeger*, L.R. 23 Ch. D. 173; 52 L.J. Ch. 449; 48 L.T. 518; 31 W.R. 576.

(iii.) **C. C. R.**—*Publication of Notice in Gazette—Cuttings from Gazette.*—On the trial of the prisoner, a file of the proceedings in the Bankruptcy Court was produced containing a cutting from the *London Gazette* in proof of the publication of an order of the County Court in the *Gazette*: *Held* that the cutting from the *Gazette* was improperly received as evidence of the publication.—*Regina* v. *Lowe*, 48 L.T. 768.

Fishery :—

(iv.) **Q. B. Div.**—*Placing a device to Catch Fish—Permanent Structure—36 & 37 Vict., c. 71, s. 15.*—Appellant was lessee of a mill on a river, not a salmon river. Below the weir an eel trap was fixed, which was a permanent structure erected before the Salmon Fishery Acts, and before defendant's lease commenced. The eel-trap only became operative when the flood-gates of the weir were raised. Appellant raised the flood-gates and caught fish in the trap: *Held* that he was rightly convicted of placing a device to catch fish within sec. 15 of Salmon Fishery Acts, 1873.—*Briggs* v. *Swanwick*, L.R. 10 Q.B.D. 510; 52 L.J. M.C. 63; 31 W.R. 565.

(v.) **H. L.**—*Several Fishery—Tidal River—Prescription—Evidence.*—In an action for trespass to a several fishery in a tidal navigable river, it was proved that as far back as living memory extended, eel-fishing had been carried on in the river without interference by plaintiff or his predecessors: *Held* that this could not take away the right to a several fishery, which can only pass by deed: *Held* also that the proceedings in a possessory suit between plaintiff's ancestor and V., who each claimed a several fishery in the river, and the judgments obtained in an action for trespass to the fishery in 1826 against strangers to the present suit, and in an action of trespass in 1827 in respect of another part of the same river, were admissible in evidence.—*Neill* v. *Duke of Devonshire*, L.R. 8 App. 135; 31 W.R. 622.

Fraud :—

(v.) **C. A.**—*False Representation as to Character—Not in Writing—9 Geo. IV., c. 14, s. 6.*—A representation as to the credit or character of another person is within sec. 6 of Lord Tenterden's Act, though made with the object of gaining a benefit for the person making the representation.—*Pearson* v. *Seligman*, 31 W.R. 730.

Highway :—

(i.) **Q. B. Div.**—*Maintenance of Roads—Removal of Snow*—41 & 42 *Vict.*, *c.* 77, *s.* 13.—Expenses incurred by a highway authority in removing snow from main roads are expenses incurred in the maintenance of such roads within sec. 13 of Highways and Locomotives Amendment Act, 1878.—*Amesbury Guardians* v. *Wiltshire Justices*, L.R. 10 Q.B.D. 480; 52 L.J. M.C. 64; 31 W.R. 521.

(ii.) **Q. B. Div.**—*Rate—Urban District—Part of Parish Excluded*—5 & 6 *Will. IV.*, *c.* 50, *s.* 29; 38 & 39 *Vict.*, *c.* 55, *s.* 216.—The hamlet of G. was formerly a parish maintaining its own poor, and prior to 1875 part of the hamlet was formed into a local government district, called the Inner District, with a local board, and the other part, the Outer District, excluded from it. The local board repaired the highways in the outer district and separately assessed a rate of 3s. 4d. in the pound on the inhabitants of the Outer District without first obtaining the consent of four-fifths of them: *Held* that such consent was rendered unnecessary by sec. 216 of Public Health Act, 1875.—*Dyson* v. *Greetland Local Board*, 48 L.T. 636.

Husband and Wife :—

(iii.) **C. A.**—*Divorce—Guilty Wife—Alimony*—20 & 21 *Vict.*, *c.* 85, *s.* 32.—Where a decree for dissolution of marriage has been pronounced against a guilty wife, a petition for alimony presented by her under sec. 32 of Divorce Act more than a year after decree is out of time: *semble* that it is not necessary in every case that special cause should be shown for allowing alimony to a guilty wife. *Robertson* v. *Robertson*, L.R. 8 P.D. 94; 48 L.T. 590; 31 W.R. 652.

(iv.) **P. D. A. Div.**—*Judicial Separation—Maintenance of Children*—20 & 21 *Vict.*, *c.* 85, *ss.* 22, 32.—The Court has no power after a decree for judicial separation to order the husband to pay into Court a lump sum to provide for the maintenance of the children of the marriage.—*Hunt* v. *Hunt*, 31 W.R. 724.

(v.) **C. A.**—*Separation Deed—Subsequent Adultery.*—Where husband and wife had been separated by deed in which the wife engaged not to avail herself of any act anterior to its date, and the wife subsequently petitioned for a divorce, establishing adultery and cruelty committed before the deed, the Court declined to hold that the cruelty was revived by subsequent adultery.—*Rose* v. *Rose*, L.R. 8 P.D. 98; 52 L.J. P.D.A. 25; 48 L.T. 378; 31 W.R. 573.

(vi.) **Q. B. Div.**—*Trespass to Wife's Property—Action by Wife*—45 & 46 *Vict.*, *c.* 75, *s.* 1 (2)—In an action for trespass by a married woman she is entitled to sue in her own name for torts which were committed before the commencement of the Married Women's Property Act, 1882.—*James* v. *Barraud*, 31 W.R. 786.

(vii.) **Ch. Div. C. J.**—*Wife's Real Estate—Deed Acknowledged—Concurrence of Husband—Prior Bankruptcy*—3 & 4 *Will. IV.*, *c.* 74, *s.* 77.—The husband of a woman entitled in remainder, on the death of the tenant for life, to a share in the proceeds of sale of realty, executed a deed assigning all his property to creditors, and afterwards became bankrupt. After the death of the tenant for life, the husband joined with his wife in executing deeds duly acknowledged by the wife, creating charges on the wife's share: *Held* that the persons claiming under those deeds were entitled in preference to the trustee of the creditor's deed and the assignee in bankruptcy.—*Re Jakeman's Trusts*, L.R. 23 Ch. D. 344; 52 L.J. Ch. 363.

(i.) **Ch. Div. C. J.**—*Wife's Reversionay Interest—Deed Acknowledged—Mortgage Debt—3 & 4 Will. IV., c. 74, ss. 1, 77.*—S., a married woman, was jointly entitled with T. and W. in remainder on the death of J. to two mortgage debts under the will of her father; and in 1854, after T.'s death, by a deed to which J., W., S., and her husband, and the trustees of the will were parties, but to which T.'s administrator was not a party, the mortgage debts, which were secured on realty, were assigned by way of mortgage: *Held* that the deed was not effectual to pass S.'s share of the mortgage debts.—*Re Newton's Trusts*, L.R. 23 Ch. D. 181.

(ii.) **Q. B. Div.**—*Wife's Separate Estate—Restraint on Anticipation—Attachment of Debt—Ord. 45, r. 1.*—Judgment was signed in an action on a promissory note by a husband and wife jointly; and it was sought to attach in execution moneys in the hands of trustees forming part of the income of trust funds payable to the separate use of the wife without power of anticipation, and which had accrued since the judgment: *Held* that the moneys could not be attached.—*Chapman* v. *Biggs*, L.R. 11 Q.B.D. 27; 48 L.T. 704.

Innkeeper :—

(iii.) **Ch. Div. K. J.**—*Lien—Taking Security—Custody of Goods.* Where an innkeeper takes a security for an account due to him from a customer, he does not thereby necessarily destroy his lien, unless there is something in the nature of the security, or the facts of the case inconsistent with the existence of the lien. An innkeeper detaining goods of a customer will not be liable for damage sustained by such goods, unless occasioned by his negligence.—*Angus* v. *McLachlan*, L.R. 23 Ch. D. 330; 31 W.R. 641.

Insurance :—

(iv.) **C. A.** *Fire Insurance—Fire after Contract and before Sale—Insurable Interest.*—A vendor contracted to sell a house to a purchaser, which had been insured by the vendor with plaintiffs against fire. After date of contract and before completion the house was damaged by fire, and the vendor received the insurance moneys from plaintiffs: *Held* that plaintiffs could recover back the money.—*Castellain* v. *Preston*, 52 L.J. Q.B. 366; 31 W.R. 557.

(v.) **Ch. Div. C. J.**—*Fire Insurance—Infant Tenant in Tail—Right to Insurance Money.*—Where a policy of fire insurance has been kept up out of rents belonging to an infant tenant in tail under no obligation to repair or insure, moneys received under the policy belong to the infant as personal estate.—*Warwicker* v. *Bretnall*, L.R. 23 Ch. D. 188; 31 W.R. 520.

(vi.) **Ch. Div. F. J.** *Life Insurance—Lien—Payment of Premiums.* The only way in which a lien upon moneys secured by a policy of insurance can be created by payment of premiums, are: (1) by contract with a beneficial owner of the policy; (2) by reason of the right of trustees of the policy to an indemnity out of it for moneys expended in its preservation; (3) by subrogation to the rights of the trustees of some persons who may have advanced money at their request for the preservation of the property; (4) by reason of the right vested in mortgagees of the policy to add to their charge any moneys paid by them to preserve the property.—*Leslie* v. *French*, 48 L.T. 564; 31 W.R. 561.

(vii.) **Ch. Div. C. J.**—*Life Insurance for Benefit of Wife and Children—Death of Wife—Appointment of Trustee.—33 & 34 Vict., c. 93, s. 10.*—In 1874 A. effected an insurance on his life expressed to be for the benefit of his wife and children under the Married Woman's Property Act, 1870, and

died in July, 1882, intestate, his wife and one of his children having predeceased him. On petition for appointment of a trustee of the policy moneys, and for a declaration of the rights and interests of the children therein: *Held* that the Court could not make any declaration, but would assist the petitioners by prefacing the order for the appointment of the trustee by an expression of opinion that the wife and children took as joint tenants.—*Re Adams' Policy Trusts*, 48 L.T. 727; 31 W.R. 810.

Justice of Peace:—

(i.) **Q. B. Div.**—*Jurisdiction—Offence of Obstructing Street—Bonâ fide Claim of Right.*—A local Act gave jurisdiction to justices over the offence of throwing or laying down stones, iron, &c., in a street. A person charged with the offence maintained that the spot on which the iron had been laid down was his private property: *Held* that the jurisdiction of the justices was not ousted, as they had power to determine what was a street.—*Regina* v. *Young*, 52 L.J. M.C. 55.

Landlord and Tenant:—

(ii.) **Ch. Div. P. J.** *Distress—Express Right to—Common Law Right.* Where an express right of distress is given by a lease, extending to property which could not be destrained at common law, but exerciseable only after a certain period after default, the common law right of distress is not ousted. If the lessor exercises both rights simultaneously, but before the express right is properly exercisable, he will be entitled to marshall the property seized so as to cast the debt in respect to which he exercises the common law right in the first instance on goods seizable under that right.—*Re River Swale Brick Co.*, 48 L.T. 778.

(iii.) **C. A.** *Distress—Fraudulent Removal of Goods by Tenant—8 Anne, c. 18, ss. 6, 7; 11 Geo. II., c. 19, s. 1.*—A tenant fraudulently removed his goods with the intention of defeating the landlord's right of distress immediately before the expiration of his term, and then gave up possession of the premises to the landlord: *Held* that the landlord could not follow and seize the goods for arrears of rent, as 11 Geo. II., c. 19, s. 1, does not apply where the tenant has ceased to be in possession of the premises.—*Gray* v. *Stait*, 52 L.J. Q.B. 412; 31 W.R. 662.

(iv.) **Q. B. Div.**—*Lease of Sporting Rights in Scotland—Lease made in England—Absence of Seal.*—By Scotch law an instrument under seal is not necessary for the conveyance of a sporting right, and therefore the stipulations of an unsealed lease made in England between Englishmen of a sporting right over lands in Scotland may be enforced by action in the English Courts.—*Adams* v. *Clutterbuck*, L.R. 10 Q.B.D. 403; 48 L.T. 614; 31 W.R. 723.

Lands Clauses Act:—

(v.) **C. A.** *Arbitration—Costs—Payment due before Conveyance.*—Decision of Q. B. Div. (see v., p. 9) affirmed. *Capell* v. *Great Western Rail. Co.*, 52 L.J. Q.B. 345; 48 L.T. 505; 31 W.R. 555.

(vi.) **Ch. Div. F. J.**—*Costs—Taxation.*—Costs cannot be taxed under sec. 83 of Lands Clauses Act, 1845, after payment. *Ex parte Somerville, Re South-Eastern Rail. Co.*, L.R. 23 Ch. D. 167; 52 L.J. Ch. 438; 48 L.T. 416; 31 W.R. 518.

(vii.) **Ch Div. P. J**—*Costs—Interim Investment—Settled Land Act, 1882, s. 32.*—Section 32 of Settled Land Act, 1882, does not take away the absolute discretion of the Court respecting costs.—*Re Hanbury's Trusts*, 31 W.R. 784.

(i.) **Ch. Div. F. J.**—*Interim Investment—Charity—45 & 46 Vict.*, c, 38, ss. 21, 32.—Lands belonging to a charity were taken by a public body, and the purchase-money paid into Court under the Lands Clauses Act: *Held* that the purchase-money could be dealt with under the provisions of sec. 32 of Settled Land Act, 1882, as "money liable to be laid out in the purchase of land to be made subject to the settlement."—*Re Byron's Charity*, L.R. 23 Ch. D. 171; 48 L.T. 515; 31 W.R. 517.

Licensed House:—

(ii.) **Q. B. Div.**—*Off License—Refusal to Renew—Appeal—45 & 46 Vict.*, c. 34, s. 1.—The right of appeal to quarter sessions from a refusal of licensing justices to renew a certificate for a license to sell beer not to be consumed on the premises has not been taken away by sec. 1 of Beer Dealers' Retail Licenses Act, 1882.—*Regina* v. *Schneider*, L.R. 11 Q.B.D. 66; 52 L.J. M.C. 51; 48 L.T. 482.

(iii.) **Q. B. Div.**—*Sunday Closing—Wales—Christmas Day and Good Friday—44 & 45 Vict.*, c. 61, s. 1.—*Held* that the word "Sunday" in the Sunday Closing (Wales) Act, 1881, cannot be held to include Christmas Day or Good Friday.—*Forsdike* v. *Colquhoun*, L.R. 11 Q.B.D. 71.

Limitations, Statutes of:—

(iv.) **Q. B. Div.**—*Detinue—Conversion—Title Deeds.* Plaintiff was owner in fee of realty, and in 1859 his son fraudulently took away the title deeds without plaintiff's knowledge and deposited them with defendant as security for an advance Defendant was not guilty of fraud or negligence. In 1882 plaintiff demanded the deeds from defendant, and upon his refusal, brought an action to recover them; and defendant pleaded the Statute of Limitations: *Held* a bad plea, as the cause of action did not arise until defendant's refusal to give up the deeds.—*Spackman* v. *Foster*, L.R. 11 Q.B.D. 99; 52 L.J. Q.B. 418; 48 L.T. 670; 31 W.R. 548.

Lord Mayor's Court:—

(v.) **C. A.**—*Judgment for less than £20—Removal to High Court—35 & 36 Vict.*, c. 86, s. 6; sch. r. 9—Decision of Q. B. Div. (see ii., p. 34) affirmed. —*Paine* v. *Slater*, L.R. 11 Q.B.D. 120; 52 L.J. Q.B. 282; 48 L.T. 623.

Lunacy:—

(vi.) **C. A.**—*Insolvent Lunatic—Maintenance—Rights of Creditors—Lunacy Orders*, 1883, ord. 34.—In the management of the estate of an insolvent lunatic, the Court will first provide for the fitting and comfortable maintenance of the lunatic and then consider the claims of creditors.—*Re Pink*, 31 W.R. 728.

(vii.) **C. A.**—*Tenant for Life Lunatic—Petition for Power to Grant Leases—45 & 46 Vict.*, c. 38, ss. 6, 8, 38, 62.—Where a tenant for life is a lunatic and the committee applies under sec. 62 of Settled Land Act, 1882, for an order enabling him to exercise the leasing powers given by sec. 6, and no trustees of the settlement are in existence, new trustees must be appointed under sec. 38 for the purposes of the Act, and must be served with notice of the application.—*Re Taylor*, 31 W.R. 596.

Master and Servant:—

(viii.) **C. A.**—*Hiring—Contract not to be Performed within a Year—Statute of Frauds.*—Plaintiff entered defendant's service under a verbal contract for a year, to commence two days after the day on which the contract was made, and before the expiration of the year he was dismissed: *Held* that the contract was within sec. 4 of Statute of Frauds, that no new

contract could be implied, and that the principles of equity as to part performance were not to be extended to contracts of this nature.—*Britain* v. *Rossiter*, L.R. 11 Q.B.D. 123.

(i.) **Q. B. Div.**—*Injury to Workman—Liability—Contributory Negligence—43 & 44 Vict., c. 42, ss. 2, 8.*—Deceased was employed by defendant to slate a house at so much the piece: *Held* that he was a workman within sec. 8 of Employers' Liability Act: *semble* that sec. 2, sub-sec. 3 of the Act doesnot make an employer liable if there is contributory negligence in the workman.—*Stuart* v. *Evans*, 31 W.R. 706.

(ii.) **Q. B. Div.**—*Injury to Workman—Liability—Negligence of Foreman—43 & 44 Vict., c. 42, s. 1 (2).*—A foreman employed to superintend certain building work let a plank, which he was lifting, fall, and thereby caused injury to a workman employed on the work: *Held* that the foreman's conduct amounted to negligence whilst in the exercise of superintendence within sec. 1, sub-sec. 2, of Employers' Liability Act, 1880.—*Osborn* v. *Jackson*, 48 L.T. 642.

(iii.) **Q. B. Div.**—*Injury to Workman—Liability—Railway—43 & 44 Vict., c. 42, s. 1 (5).*—The term "railway" in sec. 1, sub-sec. 5 of Employers' Liability Act, 1880, includes a temporary railway laid down by a contractor.—*Doughty* v. *Firbank*, L.R. 10 Q.B.D. 358; 52 L.J. Q.B. 480; 48 L.T. 530.

(iv.) **Q. B. Div.**—*Injury to Workman Liability—Railway—43 & 44 Vict., c. 42, s. 1 (5).*—A workman, subject to the orders of an inspector, was employed by a railway company to clean and keep in working order certain points and locking apparatus, the working of which was managed by a signal man. An accident occurred through the negligence of this workman: *Held*, in an action for compensation under the Employers' Liability Act, that there was no evidence that the workman had charge or control of the points within the meaning of sec. 1. sub-sec. 5 of the Act. *Gibbs* v. *Great Western Rail. Co*, L.R. 11 Q.B.D. 22; 48 L.T. 640; 31 W.R. 722.

(v.) **Q. B. Div.**—*Injury to Workman—Liability—Railway—Locomotive—43 & 44 Vict., c. 42, s. 1 (5).*—*Held*, that a steam crane which travelled on a temporary line of rails laid down by contractors, was not a "locomotive engine upon a railway" within sec. 1, sub.-sec. 5, of Employers' Liability Act, 1880.—*Murphy* v. *Wilson*, 48 L.T. 788.

Metropolitan Management:—

(vi.) **Ch. Div. V. C. B.**—*New Street—General Line of Buildings—Magistrate's Order—Injunction—Jurisdiction—25 & 26 Vict., c. 102, ss. 74, 75.*—The owner of a plot of land obtained leave from the Metropolitan Board of Works to make a new street across it, and the line of buildings of the new street was duly certified by the architect of the board. At one end of the street the owner built a house fronting another road, but having one side in the new street, and projecting beyond the line of buildings. A police magistrate made an order under sec. 75 of Metropolitan Management Amendment Act, 1862, for the demolition of the projecting part of the house: *Held*, on the evidence, that the house was not in the new street, and therefore the magistrate's order was *ultra vires*.—*Barlow* v. *Vestry of St. Mary Abbott's, Kensington*, 48 L.T. 348; 31 W.R. 514.

(vii.) **H. L.**—*New Street—Paving—Land Abutting—Railway Cutting—18 & 19 Vict., c. 120, s. 105; 25 & 26 Vict., c. 102, s. 77.*—A railway company carried a road over a cutting by means of a bridge, The road was paved by the Board of Works of the district, and constituted a new street: *Held* that neither the parapets of the bridge nor the subjacent

soil in the cutting were lands bounding or abutting upon the new street within sec. 77 of Metropolitan Management Amendment Act, 1862.—*Great Eastern Rail. Co.* v. *Hackney Board of Works*, 31 W.R. 769.

(i.) **Q. B. Div.**—*Rating—Market Tolls—32 & 33 Vict., c.* 70; 41 & 42 *Vict., c.* 74.—In 1871 the Corporation of London, as the local authority under the Contagious Diseases (Animals) Act, 1869, built a market at D. for the reception and sale of foreign cattle, and levied a fixed charge per head, for wharfage, carriage and market dues on all animals landed: *Held* that such charges were tolls made in respect of the user and occupation of the market, and were therefore rateable.—*Mayor of London* v. *Greenwich Assessment Committee*, 48 L.T. 437.

Mines:—

(ii.) **H. L.**—*Fixtures—Right of Landowner—High Peak Customs.*—Miners under the customs of the High Peak in Derbyshire, are entitled to remove, during the continuance of their mining rights, buildings which they have erected for mining purposes on the surface of the land.—*Wake* v. *Hall*, L.R. 8 App. 195; 31 W.R. 585.

(iii.) **Q. B. Div.**—*Gas Company—Right to Support for Pipes.*—In 1874 a limited company, without statutory powers, laid gas mains under a public highway, the minerals under which were reserved to the Duke of L. In 1878 the plaintiff company was incorporated by an Act incorporating the Gas Works Clauses Acts, 1847 and 1871, and the mains of the old company were vested in plaintiffs. In consequence of the mining operations of licensees of the Duke of L. the road subsided, and the mains were injured: *Held* that plaintiffs had a right to support for their mains, and were entitled to damages.—*Normenton Gas Co.* v. *Pope*, 48 L.T. 666.

(iv.) **C. A.**—*Inclosure of Waste—Reservation of Minerals—Damage to Surface—Right to Support.*—Where waste of a manor is inclosed and allotted among the copyholders by an Act of Parliament which reserves to the lord of the manor the mines and minerals, in order that the lord may preserve the right of destroying or injuring the surface of the allotments, it is necessary that the preservation of this right should be clearly expressed in the Act.—*Bell* v. *Love*, L.R. 10 Q.B.D. 547; 52 L.J. Q.B. 290; 48 L.T. 592.

(v.) **C. A.**—*Leasing Powers—Mining Lease—Removal of Pillars in Coal Mine—Injunction.*—Lands were devised in strict settlement with power to the tenants for life to grant mining leases for such terms and on such conditions as should seem reasonable and proper. M., the first life tenant granted a lease of collieries in the property to C. for ninety-nine years at a peppercorn rent, the lease containing the usual clauses as to the working of the collieries and providing that pillars should be left in the mine, and should not be removed without the consent in writing of M. or his assigns, or the person or persons for the time being entitled to the mines. M. having mortgaged his life interest, conveyed it to the persons entitled in remainder, who, during M.'s life, brought an action to restrain C. from working out the pillars, and denying the validity of the lease: *Held* that the lease was a valid execution of the power, and that the plaintiffs were entitled to have C. restrained from removing the pillars.—*Taylor* v. *Mostyn*, 48 L.T. 715; 31 W.R. 686.

(vi.) **Q. B. Div.**—*Metalliferous Mine—Using Skip Without Cover—35 & 36 Vict., c. 77, ss.* 23, 31.—A mine had two shafts in one of which was a man-engine with a proper cover used to lower and raise the miners, and in the other a skip without a cover. Some miners who were in the

mine got into the skip, and were raised to the top: *Held* that they were guilty of an offence against sec. 23, sub-sec. 11 of Metalliferous Mines Regulation Act, 1872.—*Frecheville* v. *Souden*, 48 L.T. 612.

(i.) **C. A.**—*Right of Support—Subjacent Owners—Restrictive Covenant.*—A. leased certain coal seams to B., who covenanted to leave unworked a barrier of coal dividing his mine from an old mine full of water, and the lease provided that nothing therein contained should prevent A. from working any coal under the seams demised, but that in doing so the working of the seams demised should not be unnecessarily interfered with, and compensation for interference should be made to B. Subsequently, A. leased to the M. company seams underlying those let to B. The company threatened to work underneath the barrier between B.'s mine and the old mine: *Held* that B. was entitled to an injunction restraining the company from working the coal so as to cause the barrier to sink or crack so as to let in water.—*Mundy* v. *Duke of Rutland*, L.R. 23 Ch. D. 81; 31 W.R. 510.

Mortgage:—

(ii.) **C. J. B.**—*Rate of Interest—Judgment.*—A covenant in a mortgage to pay interest at five per cent. for the sum advanced, or for so much as should remain due unpaid is not affected by a judgment subsequently signed by the mortgagee for principal and interest.—*Ex parte Bishop of Oxford, Re Sneyd*, 48 L.T. 616; 31 W.R. 675.

Office, Tenure of:—

(iii.) **C. A.**—*Remembrancer of City of London—Annual Election.*—Plaintiff was elected Remembrancer of the City of London under the terms of a standing order of the Court of Common Council that the office should be held subject to annual election: *Held* that there was nothing in the nature of the office or the circumstances of the case to induce the Court to decide that plaintiff held the office *deun se bene gesserit.*—*Robarts* v. *Mayor of London*, 31 W.R. 529.

Partition:—

(iv.) **Ch. Div. F. J.**—*Subsisting Power of Sale—31 & 32 Vict. c. 40. s. 4.*—The Court has jurisdiction under the Partition Act, 1868, to order a partition or sale notwithstanding that the property is subject to a power of sale vested in trustees who are able and willing to exercise it.—*Boyd* v. *Allen*, 48 L.T. 628; 31 W.R. 544.

Patent:—

(v.) **C. A.**—*Infringement—Account of Profits—Proof in Liquidation—Bankruptcy Act*, 1869, *s.* 31.—The amount found to be due on taking the account of profits made by a person infringing a patent is not a demand in the nature of unliquidated damages within sec. 31 of the Bankruptcy Act, and may be proved in the liquidation of the infringer.—*Watson* v. *Holliday*, 52 L.J. Ch. 543; 48 L.T. 545; 31 W.R. 536.

Poor Law:—

(vi.) **Q. B. Div.**—*Bastardy—Order for Payment until Mother Marries—Death of Husband.*—Justices made an order on an affiliation summons under 35 & 36, Vict., c. 65, for payment of a weekly sum until the child should attain thirteen, or the mother should marry. The mother married, and her husband died before the child attained thirteen. The mother took out a fresh summons upon which the justices made an order for payment of a weekly allowance: *Held* that this order was bad.—*Williams* v. *Davies*, L.R. 11 Q.B.D. 74.

(i.) **C. A.**—*Settlement—Derivative Birth*—39 *&* 40 *Vict.*, c. 61, s. 35.—Decision of Q. B. Div. (see viii., p. 37) affirmed.—*Madeley Union* v. *Bridgnorth Union*, 52 L J. M.C. 71; *Regina* v. *Bridgnorth Guardians*, 48 L.T. 600.

(ii.) **Q. B. Div.**—*Settlement—Lunatic Wife—Removal*—25 *&* 26 *Vict.*, c. 111, s. 20.—A wife having become insane and chargeable to the union in which her husband dwelt, was taken to the workhouse union and the medical officer certified under sec. 20 of 25 & 26 Vict., c. 111, that she was a proper person to be kept in a workhouse. An order was made by justices for her removal to another union containing her husband's last place of settlement. The husband consented to this order: *Held* that the order was good.—*Regina* v. *Preston Guardians*, L.R. 11 Q.B.D. 113.

Power of Appointment:—

(iii.) **Ch. Div. K. J.**—*Settlement—Gift in Default of Appointment—Right to share in unappointed Portion.*—Property was settled on trust to raise £12,000 for the benefit of E. and L., in such shares as M. should appoint, and in default of appointment for E. and L. equally on attaining twenty-one or marriage, to be paid to them at that age or time after the death of M., or by his consent in writing during his life. By deed poll in 1844 M. appointed £5,000 to be raised and paid to E. at once, and £1,000 to be paid to her after his death, to the intent that the payment of her portion under the settlement might be accelerated; and he died without making any further appointment: *Held* that E. was entitled to share equally with L. in the unappointed portion of the £12,000.—*Re Alfreton Estates Trusts*, 31 W.R. 702.

(iv.) **Ch. Div. F. J.** *Will—General Bequest—Wills Act*, 1837, s. 27.—Testator, who had a general power of appointment over settled funds, bequeathed all moneys in the public funds, or in the care of U. or elsewhere, which he died possessed of, among his children. U. was one of the trustees of the settlement, and he had in his hands at the date of the will certain moneys of testator not subject to the settlement: *Held* that the power of appointment had not been exercised.—*Re Greaves' Settlement Trusts*, L.R. 23 Ch. D. 313; 48 L.T. 414; 31 W.R. 807.

Practice:—

(v.) **C. A.**—*Appeal—Notice—Change of Solicitors.*—After judgment and before notice of appeal appellant changed his solicitors, but the London agents were the same as those of the former solicitors. After notice of appeal the order to change was procured. The notice was signed by the London agents as agents for the new solicitors: *Held* that the notice was valid.—*Kettlewell* v. *Watson*, 31 W.R. 709.

(vi.) **C. A.**—*Appeal—Security for Costs—Winding-up of Company—Ord.* 58, r. 15.—Where an insolvent company is the sole appellant against a winding-up order, security for the respondent's costs of appeal will be required to be given.—*Re Photographic Artists Co-operative Association*, 48 L.T. 454; 31 W.R. 509.

(vii.) **C. A.**—*Appeal—Time—Order made in Winding-up and in Action—Ord.* 58, r. 9.—An action having been brought by debenture holders against a company to enforce their securities, and an order having been made to wind-up the company; an order was subsequently made in the action and in the winding-up sanctioning a certain arrangement. An unsecured creditor of the company applied after the lapse of more than

twenty-one days from his receiving a copy of the order, but within the time for appealing from a final order in an action, for leave to appeal: *Held*, that as he could not have been made a party to the action, he was too late under the provisions of Ord. 58, r. 9.—*Wood* v. *Madras Irrigation Co.*, L.R. 23 Ch. D. 248.

(i.) **Ch. Div. P. J.**—*Attachment—Order in Chambers—Entry of—Cons. Ord.* 35, *r.* 32.—An order made in the chambers of a judge of the Chancery Division must be drawn up and entered before it can be enforced by process.—*Ballard* v. *Tomlinson*, 48 L.T. 515; 31 W.R. 563.

(ii.) **Ch. Div. F. J.**—*Commission to take Evidence Abroad—Single Commissioner—Rules of Court, April*, 1880, *Sch. Form G.* 11.—When a single commissioner is appointed to take evidence abroad, the commission should authorize him to administer the oath to himself.—*Wilson* v. *De Coulon*, L.R. 22 Ch. D. 841; 48 L.T. 514.

(iii.) **C. A.**—*Concurrent Actions—Stay of Proceedings—Lancaster Court.*—A judgment creditor of defendant brought an action in the Palatine Court of Lancaster to obtain a declaration that he had a charge upon lands of defendant comprised in a settlement, and to carry into effect the trusts of the settlement; and he obtained a declaration of his charge and judgment for administration enquiries, and a receiver. Afterwards a beneficiary under the settlement brought an action in the High Court to carry into effect the settlement trusts, and charging the trustees with breach of trust. On plaintiff in the Palatine action undertaking to add an inquiry as to the breach of trust, the Court stayed all proceedings in the action in the High Court.—*Townsend* v. *Townsend*, L.R. 23 Ch. D. 100; 48 L.T. 694; 31 W.R. 734.

(iv.) **Ch. Div. F. J.**—*Concurrent Actions—Transfer—Ord.* 51, *r.* 2.—P. brought an action against L. in the Q. B. Div., and L. brought an action for account against P. in the Chancery Div., and he stated by way of counter-claim in P.'s action, the relief sought in his own action. P. asked that L.'s action might be transferred to the Q. B. Div. or stayed: *Held* that as L.'s action was properly triable in the Ch. Div. the Court could not transfer it.—*Ladd* v. *Puleston*, 31 W.R. 539.

(v.) **Ch. Div. P. J.**—*Concurrent Actions in England and Scotland—English Settlement—Scotch Divorce.*—An English lady married in England a domiciled Scotchman, and a settlement in English form was executed of property wholly in England. The husband subsequently obtained a divorce in Scotland on the ground of his wife's adultery; and he brought an action in Scotland for the construction of the settlement. The wife brought an action in England to administer the trusts of the settlement. On her application the husband was restrained from proceeding with the Scotch action.—*Hearn* v. *Glanville*, 48 L.T. 356.

(vi.) **Ch. Div. P. J.**—*Contempt of Court—Marriage of Infant Ward—Motion to Commit.*—A motion to commit a person for contempt of court in marrying an infant ward ought not to be made until the matter has been brought before the judge in chambers.—*Brown* v. *Barrow*, 48 L.T. 357.

(vii.) **C. A.**—*Costs—Appeal—Collision Action—Both Ships to Blame.*—Where the Court of Appeal varies a judgment of the Admiralty Division, that only one of two ships is to blame for a collision, by finding both to blame, no order will be made as to costs in either court.—*The Hector*, 52 L.J. P.D.A. 47.

(viii.) **C. A.**—*Costs—Appeal—Cross-Appeal—Ord.* 58, *r.* 6.—Where defendant appealed from an order, and plaintiff gave notice of appeal on a minor point in the order, and both appeals were dismissed: *Held* that as the

costs had not been materially increased by plaintiff's cross-appeal, the costs ought not to be apportioned, but defendant was allowed £5 for his costs of the cross-appeal.—*Robinson* v. *Drakes*, L.R. 23 Ch. D. 98 48 L.T. 740.

(i.) **Q. B. Div.**—*Costs—Certiorari—Civil Proceeding—Ord.* 62, *rr.* 2, 6.—A rule for a certiorari to bring up and quash an order of justices made under sec 158 of Public Health Act, 1875, for the payment of expenses of pulling down buildings erected contrary to a bye-law, is a civil proceeding on the Crown side of the Q. B. Div. within Ord. 62, r. 2, and costs are in the discretion of the Court.—*Regina* v. *Morris*, 31 W.R. 609.

(ii.) **C. A.**—*Costs—Counterclaim.*—When both claim and counterclaim have been successful, plaintiff, in the absence of any direction, is entitled to the general costs of the action, notwithstanding that the result of the whole litigation is in favour of defendant.—*Ward* v. *Morse*, 52 L.J. Ch. 524.

(iii.) **Ch. Div. C. J.**—*Costs—Defaulting Executor—Bankruptcy.*—Where an executor became bankrupt subsequently to the commencement of an action to administer his testator's estate, and a balance was found due from him which was not paid: *Held* that he was not entitled to costs of action subsequent to the bankruptcy.—*Hannay* v. *Basham*, L.R. 23 Ch. D. 195; 52 L.J. Ch. 408; 48 L.T. 476; 31 W.R. 743.

(iv.) **C. A.**—*Costs—Executor of Defaulting Trustee.*—A trustee having invested trust monies in an unauthorised security, on his death his executrix became trustee, and instituted an action to administer the trusts, under which the greater part of the trust fund was recovered: *Held* that she was not entitled to her costs of the action as against the cestuis-que-trust, but she was entitled to her other costs, charges, and expenses as trustee.—*Gurney* v. *Gurney*, 48 L.T. 529.

(v.) **Q. B. Div.**—*Costs—Inspection of Property—Appeal—Judicature Act,* 1873, *s.* 49.—*Ord.* 52, *r.* 3.—An order was made in Chambers for the inspection of defendant's property, the costs of the inspection to be paid by plaintiff: *Held* that these costs were in the Judge's discretion, and that no appeal lay from the order without leave.—*Mitchell* v. *Darley Main Colliery Co.*, L.R. 10 Q.B.D. 457; 52 L.J. Q.B. 394; 31 W.R. 549.

(vi.) **Ch. Div. F. J.**—*Costs Set-Off.* Trustees who had recovered judgment for money due to the trust estate against a defendant, were not allowed to set-off costs payable by them to defendant in respect of a petition in the matter of the trust.—*Wilde* v. *Walford*, 52 L.J. Ch. 435; 48 L.T. 352; 31 W.R. 518.

(vii.) **Q. B. Div.**—*Costs—Solicitor Ordered to Pay—Appeal.*—An order upon a solicitor personally to pay the costs of an application is within sec. 49 of Judicature Act, 1873, and no appeal will lie therefrom without leave.—*Re Bradford & Thursby*, 48 L.T. 765.

(viii.) **C. A.**—*Costs—Trustee—Settlement Set Aside—Appeal.*—When a settlement has been set aside, the trustee has no absolute right to his costs; and therefore where costs have been given against him, he has no right of appeal.—*Dutton* v. *Thompson*, L.R. 23 Ch. D. 278; 31 W.R. 596.

(ix.) **Q. B. Div.**—*Death of Defendant—Special Case—Judgment—Action in Tort.*—An action to recover damages for injury to plaintiff's land by wrongful acts of defendant, was referred to an arbitrator to state a special case for the opinion of the Court, and judgment was given on the special case in favour of plaintiff: *Held* that this was a final judgment determining the rights of the parties, though the damages remained to be assessed, and that on defendant's death, his executrix could be added as defendant.—*Chapman* v. *Day*, 31 W.R. 767.

(i.) **Ch. Div. P. J.**—*Death of Defendant—Survival of Cause of Action—Trespass—Working Coal—Way-leave.*—Inquiries were directed in an action as to what quantities of coal had been conveyed from defendants' collieries through roads under plaintiff's farm, and how much ought to be paid by defendants for way-leave; and also whether plaintiff's property had sustained any damage by reason of the way in which defendants had worked the coal. One of the defendants having died his executrix moved that the inquiries might be stayed as against her: *Held* that the sums payable under the enquiries as to way-leave and conveyance of coal were in the nature of compensation for the use of way-leave, and the cause of action survived against the executrix; but that the inquiry as to damages must be stayed.—*Phillips* v. *Homfray*, 52 L.J. Ch. 401.

(ii.) **C. A.**—*Discontinuance by Plaintiff—Counter-claim—Judicature Act, 1873, s. 24—Ord. 19, r. 3; Ord. 23.*—The discontinuance by a plaintiff of an action does not put an end to a counter-claim therein.—*M'Gowan* v. *Middleton*, 52 L.J. Q.B. 355.

(iii.) **C. A.**—*Discovery—Interrogatories—Privilege.*—Though a mere matter of fact is not protected from discovery by reason of its having been communicated by a solicitor to his client, a confidential communication of inferences or results from facts is protected, as is information obtained in view of litigation, after its commencement.—*Kennedy* v. *Lyell*, 48 L.T. 455; 31 W.R. 691.

(iv.) **H. L.**—*Discovery—Interrogatories—Recovery of Land.*—Plaintiff in an action of ejectment administered interrogatories seeking discovery of matters relating to plaintiff's, and not to defendant's title: *Held* that the interrogatories must be answered.—*Lyell* v. *Kennedy*, L.R. 8 App. 217; 52 L.J. Ch. 385; 48 L.T. 585; 31 W.R. 618.

(v.) **Q. B. Div.**—*Discovery—Interrogatories—Sufficiency of Answer.*—In an action against a tramway company for negligence, in reply to interrogatories as to the conduct of defendants' driver, the defendants, by their secretary, refused to answer on the ground that they had received no information beyond that contained in the driver's report, and further stated that certain information had been collected by the solicitor with a view to establish the defence: *Held* that the answer was insufficient.—*Pavitt* v. *North Metropolitan Tramways Co.*, 48 L.T. 730.

(vi.) **C. A.**—*Discovery—Production of Documents.*—Decision of Pearson, J. (see ix., p. 72) affirmed.—*Prestney* v. *Mayor of Colchester*, 48 L.T. 749; 31 W.R. 757.

(vii.) **Q. B. Div.**—*Discovery—Production of Documents—Committee of Lunatic.*—In an action against the committee of a lunatic involving the question of the lunatic's title to property: *Held* that an order could not be made on the committee to grant inspection of title deeds which were in the custody of the Court of Chancery.—*Vivian* v. *Little*, 48 L.T. 793.

(viii.) **C. A.**—*Discovery—Production of Documents—Privilege.*—Decision of V. C. B. (see ii., p. 73) affirmed.—*Westinghouse* v. *Midland Rail. Co.*, 48 L.T. 462.

(ix.) **Q. B. Div.**—*Discovery—Production of Documents—Privilege.*—On a summons to inspect a letter by a person not a party to the action to one of the defendants, defendants filed an affidavit to the effect that the letter related only to their case, and did not tend to support the plaintiffs, or impeach their own case: *Held* that, in the absence of evidence to the contrary, the affidavit was conclusive, and inspection must be refused.—*Bulman* v. *Young, Ehlers & Co.*, 31 W.R. 766.

(i.) **Ch. Div. P. J.**—*Evidence—Cross-Examination before Trial.*—Though a suitor has the privilege of issuing a subpœna for the cross-examination of a witness at any stage of the action, the privilege will be controlled.—*Fenton* v. *Cumberlege*, 48 L.T. 776.

(ii.) **Ch. Div. V. C. B.**—*Indorsement on Writ of Date of Service—Extension of Time—Ord. 9, r.* 13.—Where, through inadvertence, the date of service of a writ has not been endorsed upon it within the time prescribed by Ord. 9, r. 13, the Court can extend the time for doing so.—*Sproat* v. *Peckett*, 48 L.T. 755.

(iii.) **C. A.**—*Inferior Court—Power to give judgment under Ord.* 40, *r.* 10—*Judicature Act*, 1873, *s.* 89.—The Judge of the Mayor's Court, London, has no power, on motion for a new trial, to direct judgment to be entered for either of the parties to the action under Ord. 40, r. 10.—*Pryor* v. *City Offices Co.*, L.R. 10 Q.B.D. 504; 52 L.J. Q.B. 362; 48 L.T. 698; 31 W.R. 777.

(iv.) **Ch. Div. K. J.** —*Jurisdiction—Immovable Property Abroad.*—An action was brought against executors and trustees under a will to recover the proceeds of sale of a house in Dresden, which had been sold by their testator, and to which plaintiffs claimed to be entitled: *Held* that as this was a contested claim to real estate situate in Dresden, the action must be dismissed in the absence of special grounds giving the Court jurisdiction.—*Graham* v. *Massey*, 48 L.T. 701.

(v.) **Q. B. Div.** *Married Woman Plaintiff—Security for Costs*—45 *&* 46 *Vict.*, *c.* 75 —A married woman can now bring an action in her own name without giving security for costs, though the cause of action arose before the Married Women's Property Act, 1882, came into operation.—*Severance* v. *Civil Service Supply Association*, 48 L.T. 485.

(vi.) **Q. B. Div.**—*Parties—Action against Firm—Appearance of One Partner Judgment—Execution against other Partner—Ord.* 12, *r.* 12; *Ord.* 42, *r.* 8.—Plaintiff issued a writ against the firm of R. & Co., R. only appeared, and judgment was signed against "R., sued as R. & Co." Subsequently plaintiff discovered that C. had been a member of the firm, and applied for an order to amend the judgment by making it against R. & Co.; and for an issue under Ord. 42, r. 8, to determine C.'s liability: *Held* that the amendment must be allowed and the issue granted.—*Munster* v. *Railton*, L.R. 10 Q B.D. 475; 52 L.J. Q.B. 409; 48 L.T. 624.

(vii.) **Q. B. Div.**—*Parties—Action against Firm—Judgment by Default—Execution against Former Partner—Ord.* 16, *r.* 10; *Ord* 42, *r.* 8.—Plaintiff brought an action and obtained judgment against the firm of H. and D. on a bill of exchange drawn by the firm. At the time when the bill was drawn M. was a member of the firm, but he ceased to be so before the issue of the writ: *Held* that leave to issue execution against M. under Ord. 42, r. 8, could not be granted.—*Davis* v. *Morris*, L R. 10 Q.B.D. 436; 52 L.J. Q.B. 401; 31 W.R. 749.

(viii.) **Ch. Div. C. J.**—*Parties—Bankruptcy of Respondent—Application to strike off Trade Mark—Ord.* 50, *r.* 4.—The registered owner of a trade mark having, since notice of an application to strike the mark off the register, gone into liquidation, leave was given under Ord. 50, r. 4, to serve notice of the application on the trustee in liquidation.—*Re Rowe's Trade Mark*, 48 L.T. 388.

(ix.) **Q. B. Div.**—*Parties—Married Woman—Ord.* 16, *r.* 8.—A married woman can bring an action by a next friend if she chooses, without joining her husband.—*Obouloff* v. *Oppenheimer*, 52 L.J. Q.B. 309.

(i.) **Ch. Div. C. J.**—*Parties—Representative Action—Leave to attend Inquiry at Chambers.*—In an action brought by plantiff on behalf of herself and all other holders of certain certificates an order was made in July, 1881, directing an inquiry as to how much in addition to a sum of £6,000 was proper to be allowed defendants for certain services. On an application by a certificate-holder for leave to attend the inquiry and contend that no sum beyond the £6,000 ought to be allowed, leave was refused.—*Conybeare* v. *Lewis*, 48 L.T. 527.

(ii.) **C. A.**—*Parties—Third Party—Action by Landlord against Sub-lessee—Ord* 36, *rr.* 17, 18.—An action was brought by the owner in fee of land against a sub-lessee in respect of waste committed by digging sand contrary to the terms of the superior lease, and defendant obtained an order, *ex parte*, to serve the intermediate lessee with a third party notice. It appeared that defendant claimed indemnity from the lessee under a covenant for quiet enjoyment, the covenant being restricted in the ordinary way to disturbance by the lessee and those claiming under him: *Held* that the order must be discharged.—*Corrie* v. *Allen*, 48 L.T. 464.

(iii.) **P. D. A. Div.**—*Parties—Third Party—Collision of Ships—Tow and Tug—Ord.* 16, *rr.* 18, 21.—In an action for damage by collision brought by a vessel at anchor against a vessel in tow of a tug, the owners of the tug were made third parties under Ord 16, r. 18, as defendants claimed indemnity from them on the ground that the improper navigation, if any, was that of the tug: *Held*, on plaintiff's application, that the third parties must be dismissed.—*The Bianca*, L.R. 8 P.D. 91; 52 L.J. P.D.A 56; 48 L.T. 440.

(iv.) **Ch. Div. V. C. B.**—*Parties—Third Party—Counter-claim—Voluntary Appearance—Ord* 22, *r.* 7.—A person not a party to the action who is made defendant to a counter-claim is not entitled to enter an appearance till he has been served.—*Fraser* v. *Cooper*, 48 L.T. 754; 31 W.R. 714.

(v.) **C. A.**—*Pleading—Admissions—Counter-claim—Ord.* 40, *r* 11.—In an action for freight defendant admitted plaintiff's claim, but counter-claimed for a larger amount for damages for breach of agreement. On application by plaintiff to sign judgment under Ord 40, r. 11: *Held* affirming the decision of Q. B. Div. (L.R. 10 Q.B D. 468; 48 L.T. 389; 31 W.R. 609) that he was not entitled to do so.—*Mersey Steamship Co.* v. *Shuttleworth*, 48 L.T. 625.

(vi.) **Q. B. Div.**—*Pleading—Admissions—Counter-claim—Ord* 40, *r.* 11.—In an action by writ specially indorsed for goods sold and delivered, leave being given to defend, defendant did not plead any defence, but set up a counter-claim for damages in respect of goods alleged to be not according to sample: *Held* that plaintiff was entitled to judgment on admissions, but upon the terms that if defendant brought the debt into Court execution should be stayed until after the trial of the counter-claim.—*Showell* v. *Bouron*, 52 L.J. Q.B. 284; 48 L.T. 613; 31 W.R. 550.

(vii.) **Ch. Div. C. J.** —*Pleading—Admissions—Indorsement of Writ—Ord* 40, *r.* 11.—The indorsement on a writ is not a pleading so as to entitle plaintiff, without defendant's consent, to move thereon for an order on admissions, when defendant, admitting the plaintiff's claim, has given notice that he does not require the delivery of a statement of defence.—*Wallis* v. *Jackson*, L.R. 23 Ch. D. 204; 52 L.J. Ch. 384; 31 W.R. 519.

(viii.) **Ch. Div. K. J.**—*Pleading—Counter-claim—No Reply—Judgment on Admissions—Ord* 19, *rr.* 3, 20; 29, *r.* 12; 40, *r.* 11.—Plaintiff made default in delivering a reply to defendant's defence and counter-claim: *Held* that defendant was entitled to an order dismissing the action with

costs, and for the relief claimed by the counter-claim, but to obtain the latter order he must set down the action on motion for judgment and give notice thereof to plaintiff.—*Caroli* v. *Hirst*, 48 L.T. 759.

(i.) **Ch. Div. C. J.**—*Pleading—Default of Appearance—Foreclosure—Deficient Security.*—Where at the trial of a foreclosure action plaintiff asks for a sale and the mortgagor does not appear, the Court will dispense with an account of what is due, if it appear by the pleadings that the security is insufficient.—*Williams* v. *Owen*, 48 L.T. 388.

(ii.) **C. A.**—*Pleading—Embarrassing Defence—Agreement for Sale of Patent—Action to Enforce—Ord.* 27, *r.* 1.—In an action to enforce a contract for the sale of a patent without a warranty, it is not open to defendant to put in issue the validity of the patent, and a defence raising such issue will be struck out as embarrassing.—*Liardet* v. *Hammond Electric Light Co.*, 31 W.R. 710.

(iii.) **Ch. Div. P. B.**—*Pleading—Judgment in Other Action—Estoppel.*—Where defendants in an action pleaded the pendancy of another action about the same matter, but did not amend their defence by pleading final judgment in the action, it was *held* that, unless waived, the judgment, though not pleaded, was an estoppel.—*Nordon* v. *Levy*, 48 L.T. 703; 31 W.R. 720.

(iv.) **Q. B. Div.**—*Pleading—Special Indorsement—Notice in Lieu of Claim—Ord.* 21, *r.* 4.—In an action in respect of a bill of exchange, where the writ was specially endorsed, plaintiff gave notice under Order 21, r. 4, that his claim was that which appeared by the indorsement, and defendant demurred on the ground that the statement was insufficient and disclosed no cause of action: *Held* no ground of demurrer, and that defendant's proper course was to apply for a further statement.—*Fawcus* v. *Charlton*, L.R. 10 Q.B D. 516.

(v.) **Q. B. Div.**—*Pleading—Statement of Claim Showing Felony—Demurrer.*—A statement of claim is not demurrable on the ground that it shows the cause of action to be a felony for which the felon has not been prosecuted.—*Roope* v. *D'Avigdor*, L.R. 10 Q.B.D. 412; 48 L.T. 761.

(vi.) **C. A.**—*Reference—Account—Motion for Judgment—Judicature Act*, 1873, *ss.* 56-58—*Ord.* 36, *r.* 34.—In an action for an account an order was made under Order 33 to take an account without prejudice to the proceeding in the action being carried on; and the accounts were directed to be taken by the official referee. The referee made a report finding a sum due from the plaintiff, and plaintiff desired to object to the report: *Held* that the proper course was for defendant to move for judgment on the report, and for plaintiff to move to set the report aside. Decision of K. J. (see ix., p. 41) reversed.—*Walker* v. *Bunkell*, L.R. 22 Ch. D. 722; 48 L.T. 618; 31 W.R. 661.

(vii.) **Q. B. Div.**—*Reference—Report—Motion to Remit—Time—Judicature Act*, 1873, *ss* 57, 58—*Ord.* 39, *rr.* 1, 1*a*.—Where issues of fact in an action are referred to an official referee for trial, and he has made his report, an application to set aside the report and to have the issue remitted for re-trial must be by notice of motion, and there is no time expressly limited by the Judicature Acts or Rules within which such motion must be made—*Dyke* v. *Cannell*, 31 W.R. 747.

(viii.) **Ch. Div. P. J.**—*Revivor—Leave to Attend—Ord.* 50, *r.* 4.—A person who has been served with notice of judgment and has obtained leave to attend proceedings may, on plaintiff's death apply for leave to prosecute the action. Such application should be made *ex parte*.—*Burstall* v. *Fearon*, 31 W.R. 581.

(i.) **Ch. Div. P. J.**—*Security for Costs—Time to Apply for—Ord. 55, r. 2.*—*Held* that an application by defendant for security for costs of an action brought by a limited company might be made after reply and notice of trial.—*Lydney Iron Ore Co.* v. *Bird,* L.R. 23 Ch. D. 358.

(ii.) **Q. B. Div.**—*Service of Pleadings—Lunatic Defendant—Business Carried on in Name of Firm—Ord. 9, r. 6a.*—Order 9, r. 6a, does not apply where the defendant is a person of unsound mind.—*Fore Street Warehouse Co.* v. *Durrant & Co.,* L.R. 10 Q.B.D. 471; 52 L.J. Q.B. 287; 48 L.T. 531; 31 W.R. 765.

(iii.) **P. D. A. Div.**—*Stay of Proceedings—Lis alibi pendens.*—Where an action was pending in a Vice-Admiralty Court and another in the High Court between the same parties in respect of a collision, the plaintiff in the one Court being defendant in the other, the Court ordered a stay of proceedings in the action in the High Court.—*The Peshawur,* L.R. 8 P.D. 32; 52 L.J. P.D.A. 30; 48 L.T. 796; 31 W.R. 660.

(iv.) **Ch. Div. P. J.**—*Transfer of Government Stock—Notice in lieu of Distringas—5 Vict., c. 5, s. 4—Ord. 46.*—Notice in lieu of *distringas* was given under Ord. 46 to the Bank of England by a person interested in Government Stock, against the transfer of the stock or payment of dividends, and an application was made to the bank, on behalf of the persons in whose names the stock stood, that it should be transferred and the dividends paid to one of them. On *ex parte* motion by the party who gave the notice to the bank: *Held* that the proper order was for an interim injunction over the next motion day, the order to be served on the legal owners of the stock.—*Re Blackley's Trusts,* 48 L.T. 776.

(v.) **Q. B. Div.**—*Trial—Jury—Leaving Party to move for Judgment—39 & 40 Vict., c. 59, s. 17—Ord. 36, r. 22; Ord. 57a.*—A judge who tries an action with a jury has power to leave either party to move in the Divisional Court for judgment upon the verdict of the jury.—*Benschor* v. *Coley,* 52 L.J. Q.B. 398; 48 L.T. 533.

(vi.) **C. A.**—*Trial by Judge—Probate Action—20 & 21 Vict., c. 77, s. 35—Ord. 36, r. 26.*—A suit in the Probate Court might, before the Judicature Acts, have been tried without a jury and without the consent of any person, if the heir-at-law did not apply to prevent it, and therefore such action is now within Ord. 36, r. 26. The fact that an action has been twice tried before a jury who have disagreed does not preclude a judge from ordering a trial without a jury.—*Burgoine* v. *Moordraff,* 48 L.T. 504; 31 W.R. 735.

(vii.) **Ch. Div. C. J.**—*Ward of Court—Concealment—Order on Person to Attend—Jurisdiction.*—The Court has jurisdiction to summarily order the personal attendance before it of any persons who are supposed to be in a position to give information sought as to the place of concealment of a ward of court.—*Rosenberg* v. *Lindo,* 48 L.T. 478.

(viii.) **C. A.**—*Winding-up of Company—Joint Proceedings against Several Persons—Affidavit of Documents.*—An official liquidator applied, under sec. 165 of Companies Act, 1862, to make a number of gentlemen, including E., responsible for acts of misfeasance: *Held* that E. was not entitled to an order requiring the official liquidator to state what part of the affidavit filed by him was intended to be read against E. An official liquidator will not, in the absence of special circumstances, be required to make an affidavit as to documents in his possession.—*Re The Mutual Society,* L.R. 22 Ch. D. 714; 48 L.T. 651.

Principal and Agent:—

(i.) **C. A.**—*Advances by Broker to Agent—Antecedent Debt—Factors Acts—5 & 6 Vict., s.* 39.—A mere contingent liability on the part of brokers to their undisclosed principals in case of default by the purchaser of goods, does not constitute an antecedent debt due from the brokers to the principals, so as to invalidate an advance by the latter to the former upon security of bills of lading of goods intrusted to the brokers as agents for sale. Such advances are protected under 5 & 6 Vict., c. 39.—*Kaltenbach* v. *Lewis*, 31 W.R. 731.

(ii.) **H. L.**—*Negligence—Injury caused by Contractor.*—Defendant employed a competent architect and contractor to pull down and re-build his house, the contract providing that no deviations were to be made therein without the defendant's written consent, and that the contractor was to be responsible for all damage to property caused by negligence or want of care of himself or his workmen. The workmen cut through a party wall so negligently as to cause a neighbouring house to fall and thereby to damage plaintiff's house. The workmen had no authority to cut into the wall: *Held* that defendant was liable to plaintiff for damages.—*Hughes* v. *Percival*, 31 W.R. 725.

Principal and Surety:—

(iii.) **Ch. Div. P. J.**—*Co-sureties—Right to Contribution.*—H. and A. joined as co-sureties for C. in promissory notes to secure £13,000 for money lent. The debt was also secured by policies on C.'s life for £10,000. Afterwards, H., with his father's assistance, paid off the £13,000, and took an assignment of the policies, and on C.'s death subsequently H.'s father received the policy monies. A. having died, H. sought to prove against his estate for a share of the £13,000: *Held* that he was entitled to contribution from A.'s estate, but that he must set-off against his claim the moneys received in respect of the policies.—*Atkins* v. *Arcedeckne*, 48 L.T. 725.

(iv.) **Ch. Div. V. C. H.**—*Right to Benefit of Securities—Further Advances.*—A surety is entitled to have all securities preserved for his benefit which were taken by the creditor at the time of suretyship, or subsequently in respect of the same debt; and where the creditor has taken a further security for further advances to the principal debtor, the surety is entitled to the benefit of the original security, and to have it transferred to him on his paying off all that remains due of the original debt.—*Forbes* v. *Jackson*, 48 L.T. 722.

Probate:—

(v.) **P. D. A. Div.**—*Execution of Will—Alien—24 & 25 Vict., c.* 114, *s.* 1; 33 & 34 *Vict., c.* 14, *ss.* 2, 10.—A will made according to the forms of English law by an alien domiciled abroad at the time of making the will and of her death, though her domicile of origin was English: *Held* not entitled to probate here.—*Bloxam* v. *Favre*, L.R. 8 P.D. 101; 52 L.J. P.D.A. 42.

Public Health:—

(vi.) **Q. B. Div.**—*New Street—Conversion into—Evidence*—11 & 12 *Vict., c.* 63, *s.* 2; 21 & 22 *Vict., c.* 98, *s.* 34; 38 & 39 *Vict., c.* 55, *ss.* 4, 157.—Appellant built six cottages upon a piece of garden in a lane 6 ft. wide and 250 ft. long, which was admitted to be a street within the Public Health Acts: *Held* that the justices were not justified in coming to the conclusion that the land had been converted into a new street.—*Williams* v. *Powning*, 48 L.T. 672.

(i.) **Ch. Div. P. J.**—*Nuisance—Pollution of Stream—Local Authority—Injunction—38 & 39 Vict., c. 55, s. 21.*—Where it is within the power of a local authority, by its own act, and without recourse to legal proceedings, to abate a nuisance, an injunction will be granted to compel the abatement.—*Charles* v. *Finchley Local Board,* 52 L.J. Ch. 554; 48 L.T. 569; 31 W.R. 717.

(ii.) **Q. B. Div.**—*Paving Expenses—Recovery—Jurisdiction of Justices—38 & 39 Vict., c. 55, s. 150.*—In a proceeding by an urban authority under sec. 150 of Public Health Act, 1875, to recover summarily from owners in default expenses incurred in executing works in a street, it is not a condition precedent to the jurisdiction of the justices that there should be a valid apportionment.—*Regina* v. *Recorder of Sheffield,* 52 L.J. M.C. 78; 31 W.R. 704.

(iii.) **Q. B. Div.**—*Paving Expenses—Street—38 & 39 Vict., c. 55, ss. 4, 150.*—Summary proceedings having been taken by an urban authority to recover under sec. 150 of Public Health Act, 1875, the expenses of sewering and paving a road in the district, which was not a highway repairable by the inhabitants at large: *Held* that it was a question of fact for the Justices to determine whether or not the road was a street within that section; and that they were not bound to find as a matter of law that it was a street by the terms of the definition in sec. 4.—*Maude* v. *Baildon Local Board,* L.R. 10 Q.B.D. 394.

Railway:—

(iv.) **Q. B. Div.**—*Carrier—Special Condition—Lien—Refusal to accept goods.*—Plaintiff sent goods by defendants' railway to consignee's address, and signed a consignment note containing a condition that all goods delivered to the defendant company would be received and held subject to a general lien for money due to them, whether for carriage of the goods or other charges: *Held* that the lien continued so long as the company held the goods, and was not affected by a refusal of the consignee to accept the goods.—*Westfield* v. *Great Western Railway Company,* 52 L.J. Q.B. 276.

(v.) **C. A.**—*Compulsory Purchase—Sale of Superfluous Land—Mines—Right to Support.*—Decision of Q. B. Div. (see ii., p. 76) reversed.—*Pountney* v. *Clayton,* 31 W.R. 664.

(vi.) **Q. B. Div.**—*Railway Commissioners—Jurisdiction—Agreement to Refer—36 & 37 Vict., c. 48, s. 8.*—A railway company's special Act confirmed a provisional agreement which was set out in the schedule to the Act, and which contained a provision requiring all differences to be referred to arbitration: *Held* that this was not a provision of any general or special Act within sec. 8 of 36 & 37 Vict., c. 48, so as to give the Railway Commissioners jurisdiction.—*Great Western Railway Company* v. *Halesowen Railway Company,* 52 L.J. Q.B. 473; *Halesowen Railway Company* v. *Great Western Railway Company,* 48 L.T. 710.

Revenue:—

(vii.) **C. A.**—*Income Tax—English Company carrying on Business Abroad—Debenture Bonds—5 & 6 Vict., c. 100, Sch. D., r. 4, ss. 102, 159.*—An English company carrying on business abroad claimed to deduct from the sum assessed to income-tax the amount of interest paid by it to foreign holders of its debenture bonds: *Held* that the company was not entitled to the deduction claimed.—*Alexandria Waterworks Company* v. *Musgrave,* 52 L.J. Q.B. 349.

(i.) **Ch. Div. C. J.**—*Legacy Duty—Anglo-Chinese Domicil.*—A native of this country cannot acquire by residence in China a new domicil, so as to exempt his personal estate on his death from the payment of legacy duty.—*Re Tootal's Trusts*, 48 L.T. 816; 31 W.R. 653.

(ii.) **Q. B Div.**—*Probate Duty—Partnership Assets—Realty.*—Shares of partners in realty forming part of the partnership property must be regarded as personal estate for the purposes of probate duty, in the absence of any agreement between the partners to the contrary.—*Attorney-General* v. *Hubbuck*, L.R. 10 Q.B.D. 488; 52 L.J. Q.B. 464; 48 L.T. 608.

Scotland, Law of:—

(iii.) **H. L.**—*Railway Works—Injury to Lands—Feu-Contract—Construction—Railways Clauses (S.) Act*, 1845, *s.* 6.—A. obtained a feu-contract in 1872 to a building lot on an estate; and the contract incorporated a plan showing the whole estate divided into lots with streets laid out; and the lots were disponed together with free ish and entry thereto by the streets laid down in the plan, but in so far only as the same might be opened and not altered in virtue of a power reserved to the superior to vary and alter such streets or roads, so far as regarded ground not already feued. A railway company gave the superior statutory notice of their intention to take a part of the estate; and in 1877 executed the works, and cut off all access for carriages by one of the principal streets marked on the plan. None of A.'s land was taken: *Held* that he was not entitled to compensation under sec. 6 of Railways Clauses (Scotland) Act, 1845.—*Fleming* v. *Newport Rail. Co.*, L.R. 8 App. 265.

Settlement:—

(iv.) **Ch. Div. K. J.**—*Money Expended by Trustee in Restoring Mansion House—Right to be Recouped.*—The mansion house, on a settled estate was destroyed by fire, and the sole acting trustees expended £2,000 in addition to the insurance moneys in restoring the house. On the petition of his personal representative asking that the £2,000 might be raised by mortgage of the estate and repaid: *Held* that the Court had no power to do so, but, as it appeared that the expenditure had been beneficial, the Court ordered a sum in court, arising out of the sale of part of the estate to be applied in recouping the £2,000, so far as it would extend. —*Jesse* v. *Lloyd*, 48 L.T. 656.

(v.) **C. A.**—*Portions Charged on Land in Ireland—Rate of Interest.*—By a marriage settlement a term of years in property in Ireland was vested in trustees upon trust, by mortgage, or out of rents and profits to raise £15,000 to be divided among the children of the marriage, as D. should appoint. D. appointed the whole £15,000 among the children apportioning £4,000 to his daughter to be raised at a specified time, and to bear interest in the meantime at the rate of 5 per cent. per annum. The trustees were unable to raise the £4,000 by mortgage, and brought an action for execution of the trusts: *Held* that D. had no right to fix the rate of interest, but that as the property was in Ireland, 5 per cent. was the proper rate to be fixed by the Court, and that the trustees had a right to receive the rents and profits, first for payment of interest, and secondly in reduction of capital.—*Balfour* v. *Cooper*, 52 L.J. Ch. 495; 48 L.T. 323; 31 W.R. 569.

(i.) **Ch. Div. K. J.**—*Settled Land Act*, 1882, *s.* 38—*Trustee for Purposes of Act—Solicitor of Tenant for Life.*—The solicitor of the tenant for life is not a proper person to be appointed trustee of settled land for the purposes of the Settled Land Act, so as to enable a sale to be made by the tenant for life.—*Re Walker's Trusts*, 48 L.T. 632; 31 W.R. 716.

(ii.) **Ch. Div. K. J.**—*Settled Land Act*, 1882, *ss.* 38, 59—*Infant—Share in Partnership Land.*—The interest of an infant as one of the next-of-kin in land which had belonged to a partnership of which his father was a member and has been retained *in specie* by the administrator, is settled land within sec. 59 of Settled Land Act, 1882, so that the Court can appoint trustees under sec. 38 to exercise the powers conferred by the Act.—*Re Wells*, 31 W.R. 764.

(iii.) **Ch. Div. P. J.**—*Settled Land Act*, 1882—*Conflict between Settlement and Act—Powers of Sale and Leasing.*—Upon a summons taken out under sec. 56, sub-sec. 3 of Settled Land Act, 1882, the tenant in tail in possession being an infant, and not impeachable with waste: *Held* that the proceeds of sale of timber were applicable under the settlement; that the income of the estates was to be applied according to the settlement; that the power of sale was exercisable by the trustees with the consent of the guardians of the infant, save where selling the surface apart from the minerals under the power contained in 25 & 26 Vict., c. 108; that the power of leasing was exercisable by the guardians with the concurrence of the trustees; and that the rents under mining leases were applicable as income of the settled estates.—*Re Duke of Newcastle's Settled Estates*, 48 L.T. 779; 31 W.R. 782.

Ship :—

(iv.) **Q. B. Div.**—*Bill of Lading—Charter-Party—Cesser Clause—Demurrage.*—A bill of lading made the contents deliverable to S. or his assigns he or they paying freight for the goods (and all other conditions) as per charter-party. The charter-party contained a clause by which the charterers' responsibility ceased as soon as the cargo was on board, and a provision as to demurrage. The shipowner sued the charterers, who were assignees of the bill of lading and owners of and receivers of part of the cargo, for demurrage for detention at port of discharge: *Held* that they were liable.—*Gullichsen* v. *Stewart*, 31 W.R. 745.

(v.) **C. A.**—*Bill of Lading—Perils of Sea—Collision.*—A collision between two vessels brought about by the negligence of either of them, without the waves or wind or difficulty of navigation contributing, is not a peril of the sea within the terms of that exception in a bill of lading.—*Woodley* v. *Mitchell*, L.R. 11 Q.B.D. 47; 52 L.J. Q.B. 325; 48 L.T. 599; 31 W.R. 651.

(vi.) **C. A.**—*Charter-party—Authority of Master to bind Owners by.*—A master has no authority to bind his owners by writing forward to a broker in a foreign port, prior to the ship's arrival, authorising the broker to charter his ship.—*The Fanny, The Mathilda*, 48 L.T. 771.

(vii.) **Q. B. Div.**—*Charter-party—Demurrage.*—A charter-party provided that a ship should load a cargo and being loaded proceed to S. or as near thereto as she could safely get at all times of tide and always afloat: *Held* that demurrage became payable on the basis of the ship's voyage having ended on her arrival at the nearest place to S. that she could reach with her full cargo in the then state of the tides.—*Horsley* v. *Price*, 31 W.R. 786.

(i.) **C. A.** *Charter-party—Demurrage—Frost Preventing Loading.*—The provision as to demurrage in a charter-party contained an exception "in case of hands striking work or frosts or floods or any other unavoidable accidents preventing loading; in which case owners to have the option of employing the steamer in some short voyage trade, until receipt of written notice from charterers that they are ready to resume employment": *Held* that the exception in the charter-party did not apply where delay in supplying cargo occurred after the loading had begun.—*Coverdale* v. *Grant*, 48 L.T. 701.

(ii.) **P. C.**—*Charter-party—Demurrage—Prompt Despatch.*—A charter-party provided that a ship was to load a cargo of coals, taking her turn with other steamers, and to receive prompt despatch in loading. The ship was loaded in her turn, but was delayed by reason of an insufficient supply of coal: *Held* that the charterers were responsible for the delay.—*Elliott* v. *Lord*, 52 L.J. P.C. 23; 48 L.T. 542.

(iii.) **Q. B. Div.** *Charter-party—General Average—Loss by Jettison—Deck Cargo.*—It was stipulated in a charter-party that the ship should be provided with a deck cargo, if required, at full freight, but at merchant's risk: *Held* that the words "at merchant's risk" excluded any right on the part of the charterers to general average contribution from the shipowners in respect of deck cargo shipped by the charterers and jettisoned.—*Burton* v. *English*, L.R. 10 Q.B.D. 426; 52 L J. Q.B. 386; 48 L.T. 730; 31 W.R. 566.

(iv.) **C. A.**—*Collision—Both ships to blame—Compulsory Pilotage—Limitation of Liability—17 & 18 Vict., c. 104, s. 388; 25 & 26 Vict., c. 63, s. 54.*—Section 54 of Merchant Shipping Act Amendment Act, 1862, does not apply to a case where two ships are to blame for a collision, and where the owners of one are relieved from liability under section 388 of Merchant Shipping Act, 1854, on the ground of compulsory pilotage; but the owners of the ship so relieved are only entitled to be paid a moiety of the damage caused to their ship.—*The Hector*, 52 L.J. P.D.A. 51.

(v.) **P. D. A. Div.** *Collision—Counter-claim—Bail—24 Vict., c. 10, s. 34.*—The power of the Admiralty Division under sec. 34 of Admiralty Court Act, 1861, to order an action to be stayed until bail has been given to answer a cross-action and counter-claim does not extend to making an absolute order to give bail.—*The Alexander*, 48 L.T. 797.

(vi.) **C. A.**—*Collision—Damages—Wages—Priority.*—Decision of P. D. A. Div. (see i., p. 48) affirmed.—*The Elin*, 52 L.J. P.D.A. 55; 31 W.R. 736.

(vii.) **P. D. A. Div.**—*Collision—Fishing Boat—Measure of Damages.* *Held* that in estimating the damages for running down a fishing-boat, whereby she was prevented for some time from continuing her fishing operations, it was proper, in assessing damages, to consider the value of the fish caught by other boats during her absence. *The Risoluto*, L.R. 8 P.D. 109; 52 L.J. P.D.A. 46; 31 W.R. 657.

(viii.) **P. D. A. Div.**—*Collision—Fog.*—In a dense fog a steamer heard the whistle of another steamer in close proximity, and thereupon the engines were slowed, but not stopped and reversed, and a collision ensued: *Held* an infringement of art. 18 of Regulations for Preventing Collisions at Sea.—*The Kirby Hall*, L.R. 8 P.D. 71; 52 L.J. P.D.A. 31; 48 L.T. 797; 31 W.R. 658.

(ix.) **P. D. A. Div.**—*Collision—Launch.*—Persons in charge of a launch are bound to take the utmost precautions to avoid injury to passing vessels.—*The George Roper*, L.R. 8 P.D. 119.

(i.) **P. D. A. Div.**—*Collision—Limitation of Liability.*—In an action by shipowners to limit their liability in respect of a collision, where it appeared that the master, who was on board, was part owner, and the collision occurred without the negligence or privity of the other owners: *Held* that they were entitled to have their liability limited with a reservation of any right of action there might be against the master for negligence.—*The Cricket, The Endeavour,* 48 L.T. 535.

(ii.) **P. D. A. Div.**—*Collision—Thames Rules, No.* 23.—The steamship S. left S. W. India Docks nearly opposite the curve of Blackwall point, and proceeded down stream at easy speed against flood tide. As she was about to round the point she saw the steamship M. in Bugsby Reach preparing to round the point, and she stopped and reversed her engines, but a collision took place: *Held* that rule 23 of Thames Rules did not apply to the S. under the circumstances.—*The Margaret,* L.R. 8 P.D. 126.

(iii.) **C. A.**—*Foreign Ship—Wages Action—Jurisdiction.*—Decision of P. D. A Div (see iv., p. 78) affirmed.—*The Leon XIII.,* L.R. 8 P.D. 121; 52 L.J. P.D.A. 58; 48 L.T. 770.

(iv.) **Q. B. Div.**—*General Average—Port of Refuge—Expenses of Warehouseing and Reloading.*—When a vessel goes into a port of refuge in consequence of an injury, whether or not the injury be the subject of general or particular average, the expenses of warehousing and reloading goods unloaded to enable the injury to be repaired, and pilotage and other charges on leaving the port, are the subject of general average.—*Svendsen* v. *Wallace,* 52 L.J. Q B. 397; 48 L.T. 795.

(v.) **Q. B. Div.**—*Harbour Authority—Sunken Wreck—Duty to Remove.*—By a local Act, the harbour of B. was vested in defendants, and jurisdiction was conferred on them over the P. harbour, for the purpose of maintaining, regulating, and buoying it, but such powers were not to confer on them the right to levy dues beyond the limits of B. harbour; and by a subsequent Act, one-half of certain light dues payable by ships on entering or leaving P. harbour, was to be paid to defendants, to be employed by them in maintaining the harbour: *Held* that they were under an obligation to remove a wreck from P. harbour, and to mark its position by buoys.—*Dormont* v. *Furness Rail. Co.,* 52 L J. Q.B. 331.

(vi.) **Q. B. Div.**—*Liability for Freight—Indorsee of Bill of Lading—*18 *&* 19 *Vict.,* c. 111, *s.* 1.—The shipper of goods indorsed the bill of lading in blank, and delivered it to defendants by way of security for money advanced to them. The goods, upon arrival at port of destination, were sold for an amount insufficient to pay the freight: *Held* that defendants were not liable for freight under sec. 1 of Bills of Lading Act, in an action by the shipowner.—*Burdick* v. *Sewell,* L.R. 10 Q.B.D. 363; 52 L.J. Q.B. 428; 48 L.T. 705; 31 W.R. 796.

(vii.) **Q. B. Div.**—*Marine Insurance—Seizure.*—By a policy on a vessel the owners warranted her free from capture and seizure. She was forcibly taken possession of for the purpose of plundering the cargo, and in consequence became a constructive total loss: *Held* that the loss was a loss by seizure within the meaning of the warranty.—*Johnston* v. *Hogg,* L.R. 10 Q.B.D. 432; 52 L.J. Q.B. 343; 48 L.T. 435; 31 W.R. 768.

(viii.) **P. D. A Div.**—*Mortgagee—Material Men—Costs—Priority.*—Where a mortgagee brings an action to realise his security, and material men with a common-law possessory lien on the ship intervene, and the ship is sold by order of the Court, and the proceeds are only sufficient to satisfy the claims of the material men, the mortgagee is entitled to be paid his taxed costs up to date of sale, out of the proceeds, in priority to the material men.—*The Sherbro,* 52 L.J. P.D.A. 28; 48 L.T. 767.

(i.) **P. D. A. Div.**—*Salvage—Amount of Award.*—In a suit to recover salvage award in respect of services rendered in towing a large steamship off a rock in the Red Sea, and into safety, the Court awarded £6,000 on a value of £62,000.—*The Lancaster*, L.R. 8 P.D. 65; 48 L.T. 679; 31 W.R. 612.

(ii.) **P. D. A. Div.**—*Salvage—Derelict—Amount of Award.*—Where a barque which had been abandoned by her owners in the North Sea was navigated by some of the salvors into the English Channel off Dungeness and thence towed into safety by a steamship, the Court award to the salvors one-half of the property salved.—*The Livietta*, L.R. 8 P.D. 24; 48 L.T. 799; 31 W.R. 643.

(iii.) **P. D. A. Div.**—*Salvage—Derelict—Default Action.*—In a salvage action in which no appearance has been entered, it was alleged that the ship and cargo were daily deteriorating in value: the Court, on motion before decree, ordered an appraisement and sale.—*The Anna Helena*, 48 L.T. 681.

(iv.) **C. A.**—*Salvage—Life Salvage—Special Agreement.*—The R. being in distress a written agreement was entered into between the captains of the R. and of the M. that the M. should stay by the R. until she was in a safe position to get to port. The R. sunk and the captain and crew of the R. were saved by the M., but no property was saved: *Held* that the M. could not recover salvage either under the agreement or under the law of the Admiralty Division.—*The Rempor*, L.R. 8 P.D. 115; 52 L.J. P.D.A. 49; 31 W.R. 640.

(v.) **P. C.**—*Suit for Wages—Vice-Admiralty Jurisdiction—Merchant Shipping Act*, 1854, *s.* 189.—A suit was brought by six seamen in the Vice-Admiralty Court, wherein the Judge found that the total amount of £203 19s. 8d. was due to them partly for wages and partly for wrongful dismissal: *Held* that by virtue of sec. 15 of Order in Council of 2 Will. IV., and of sec. 189 of Merchant Shipping Act, 1854, the Judge was wrong in dismissing the suit for want of jurisdiction on the ground that the amount due to each seaman was less than £50.—*Phillips* v. *Highland Rail. Co.*, L.R. 8 App. 329.

Solicitor:—

(vi.) **Ch. Div. P. J.**—*Bill of Costs—Signature and Delivery*—*6 & 7 Vict., c.* 73, *s.* 37.—A bill of costs for professional work in part by one firm of solicitors and in part by another firm who have succeded to the practice of the first firm is sufficiently signed and delivered so as to enable the new firm to sue for and recover the whole costs, if it is delivered together with a letter referring to it signed by the new firm.—*Penley* v. *Anstruther*, 52 L.J. Ch. 367; 48 L.T. 664.

(vii.) **Ch. Div. F. J.**—*Lien for Costs—Administration Action.*—Solicitors who have acted for all parties in an administration action, and who, during the action, cease to act for any of the parties, have not such a lien for costs as will enable them to refuse to give up documents required for the purpose of carrying on the action.—*Boughton* v. *Boughton*, L.R. 23 Ch. D. 169; 48 L.T. 413; 31 W.R. 517.

(viii.) **C. H.**—*Lien for Costs—Action for Seamen's Wages—Compromise.*—An order will not be made upon a defendant to pay plaintiff's solicitors the costs of an action for seamen's wages which has been settled by the parties without the intervention of the solicitor, unless he can establish collusion to deprive him of his costs.—*The Hope*, 52 L.J. P.D.A. 63.

(i.) **Ch. Div. V. C. B.**—*Misrepresentation—Liability of Executor.*—A solicitor who negotiated a mortgage for plaintiff made a misrepresentation to him as to the value of the property: *Held* that plaintiff could not, after the solicitor's death, make a claim against his executors for the amount of the money advanced on the mortgage in consequence of the misrepresentation.—*Young* v. *Wallingford*, 48 L.T. 756.

(ii.) **Q. B. Div.**—*Privilege from Arrest—Attachment for Contempt.*—A solicitor who has been retained to defend a person charged with a criminal offence at the preliminary enquiry held under 11 & 12 Vict., c. 42, is not privileged from arrest under a writ of attachment for contempt, while returning from the Court at which the preliminary inquiry is being held.—*Re Freston*, 31 W.R. 581.

(iii.) **H. L.**—*Unqualified Person—Proceedings in Probate Court—Penalty—23 & 24 Vict., c. 127, s. 26.*—Law stationers were in the habit, at the request of solicitors, of leaving the documents necessary for obtaining probates at the Probate Registry, and calling again for them and taking the grant of probate. They charged the solicitors only a messenger's fee for the time occupied in attending at the Registry: *Held* that they were not liable to the penalty imposed by sec. 26 of 23 & 24 Vict., c. 127.—*Law Society* v. *Waterlow*, 31 W.R. 754.

Telegraph :—

(iv.) **Q. B. Div.**—*Compensation for Monopoly—Award—Further Claim—31 & 32 Vict., c. 110, s. 9.*—An arbitrator awarded a lump sum to a railway company as compensation under sec. 9, sub-sec. 6, of Telegraph Act, 1868, but made no allusion in his award to any yearly rent under clause H. of that sub-section: *Held* that the company was precluded from any further compensation for extra poles or wires which the Postmaster-General might in future require to be erected on the railway.—*Regina* v. *Metropolitan Rail. Co.*, 48 L.T. 367.

Vendor and Purchaser :—

(v.) **Ch. Div. V. C. B.**—*Agreement for Sale—Inconsistent Conveyance—Easement.*—An agreement for sale provided that vendor should have a right of access to the slopes of the purchasers' intended railway. By the conveyance, which was a statutory deed poll, the vendor granted the lands together with all ways and other rights and easements, and the right of access was not mentioned: *Held* that the right of access was gone.—*Teebay* v. *Manchester, Sheffield & Lincolnshire Rail. Co.*, 48 L.T. 808; 31 W.R. 739.

(vi.) **Q. B. Div.**—*Deposit Forfeiture for Non-Completion—Payment in fraud of Creditors—Right to follow Money.*—A bankrupt having fraudulently disposed of his goods opened an account at a bank with the proceeds, and having made a contract for the purchase of land in an assumed name paid a deposit to the auctioneer by a cheque drawn on the bank. The vendor and auctioneer had no notice of the bankruptcy: *Held* that the bankrupt's trustee could not recover the deposit from the auctioneer, so as to prevent its forfeiture on non-completion of the contract.—*Collins* v. *Stimson*, L.R. 11 Q.B.D. 142; 52 L.J. Q.B. 440; 48 L.T. 828.

(vii.) **Ch. Div. F. J.**—*Objection to Title—Possession by Purchaser—Waiver.*—A purchaser who enters into possession of property immediately after signing the contract, where there is no agreement for possession being given before completion, and who continues in possession after the existence of certain objections to title, irremovable by vendor, have been brought to his notice, and pays part of the purchase-money and

exercises acts of ownership, will be assumed to have waived the objections to the title.—*Re Gloag & Miller*, L.R. 23 Ch. D. 320; 48 L.T. 629; 31 W.R. 601.

(i.) **Ch. Div. F. J.**—*Sale—Leave to Bid—Fiduciary Relation—Solicitor & Client.*—In a creditor's administration action against an executor a life interest forming part of the estate was directed to be sold, and C., the solicitor to the executor, obtained leave to bid. After an abortive auction the interest was sold to C. by private contract: *Held* that the sale could not be set aside by reason of the non-disclosure by C. of circumstances affecting the value of the life interest. The trustee of an estate in bankruptcy had a large claim against an insolvent estate; and before the claim was admitted he joined in the purchase of assets of the latter estate: *Held* that the sale could not be set aside.—*Boswell* v. *Coaks*, L.R. 23 Ch.D. 302; 52 L.J. Ch. 465; 31 W.R. 540.

(ii.) **Ch. Div. P. J.**—*Title—Contract by Trustees—Breach of Trust.*—Trustees of a will which contained no power to invest in realty, invested trust funds in the purchase of real estate: *Held* that, by the concurrence of one beneficiary, the trustees could make a good title on the sale of this property, but that the purchasers were entitled to see the purchase-money invested in a manner authorised by the will.—*Patten* v. *Guardians of Edmonton*, 31 W.R. 785.

(iii.) **Ch. Div. P. J.**—*Unstamped Title Deeds.*—Where an unstamped deed was a conveyance of the legal estate, and the vendors offered to procure the concurrence in the conveyance to the purchasers of the conveying parties to the unstamped deed: *Held* that the purchasers could not require the deed to be stamped at vendor's expense.—*Re Birkbeck Freehold Land Society*, 31 W.R. 716.

Voluntary Gift:—

(iv.) **Ch. Div. P. B.**—*Actual and Constructive Delivery—Intention to Give.*—A clear intention on the part of the donor to give, acted upon by the donee, constitutes a valid gift *inter vivos* without actual delivery.—*Danby* v. *Tucker*, 31 W.R. 578.

Water:—

(v.) **Ch. Div. P. B.**—*Riparian Proprietor—Diversion of Stream—Damage.*—*Held* that a riparian proprietor could not maintain an action to restrain a neighbouring riparian proprietor from granting a license to another person to use the water of the stream, where no damage could be shown to arise from such user.—*Kensit* v. *Great Eastern Rail. Co.*, 48 L.T. 784; 31 W.R. 603.

(vi.) **C. A.**—*Riparian Proprietor—Power to Grant Riparian Rights.*—A riparian owner by deed granted to defendants, owners of a mill at a distance from a river, the right to lay pipes through his land to the river. In an action by another riparian owner against defendants for taking water out of the river and returning it diminished and deteriorated: *Held* that plaintiff was entitled to succeed.—*Ormerod* v. *Todmorden Mill Co.*, 52 L.J. Q.B. 445; 31 W.R. 759.

(vii.) **Ch. Div. P. J.**—*Waterworks Company—Costs of providing Meter—26 & 27 Vict., c. 93, s. 14.* By its special Act which incorporated the Waterworks Clauses Acts, 1847 and 1863, a water company was authorised to receive payment by measure and not by rate for water supplied to fixed baths in private houses: *Held* that a consumer taking water for a fixed bath in his house was bound at his own expense to measure the water so used by some automatic and self-registering meter, or in some equally accurate way, and to record the amount from time to time taken.—*Sheffield Waterworks Co.* v. *Bingham*, 48 L.T. 604.

(i.) **Q. B. Div.**—*Waterworks Company—Rates—Mode of Calculating.*—Under the B. Waterworks Act, the B. Corporation are entitled to charge water rates proportionate to the "annual rents" of the houses supplied: *Held* that in calculating what was the annual rent of certain houses let to weekly tenants, the owner of which was rated to the poor rate and water rate, the owner was entitled to a deduction for the actual amount of poor, borough, street, and water rates paid by him, and also to a deduction on account of the probable loss to him by the occasional absence of tenants.—*Smith* v. *Mayor of Birmingham*, 31 W.R. 788.

Will:—

(ii.) **Ch. Div. P. J.**—*Annuity—Insufficient Income—Interest of Tenant for Life.*—Testatrix bequeathed certain annuities, and subject thereto she gave her residuary estate to A. for life with remainder over. The estate was insufficient to satisfy the annuities, but if Government annuities were purchased out of the corpus, there would be a small surplus left: *Held* that the income must be applied, so far as it would extend, in paying the annuities, and recourse had from time to time to the capital to make up the deficiency.—*Walker* v. *Martineau*, 52 L.J. Ch. 552; 31 W.R. 703.

(iii.) **P. D. A. Div.**—*Attestation Clause—Revocation in.*—Words of revocation contained in an attestation clause do not form part of the will, and have no operative effect.—*In the goods of Atkinson*, 31 W.R. 660.

(iv.) **Ch. Div. P. J.**—*Construction—Bequest to A. and the Heirs of his Body.*—Testator bequeathed to A. and the heirs of his body in equal proportions the interest of his residuary personalty, and if A. should die during S.'s life without leaving heirs of his body, he gave the interest of the residuary personalty to S. for life, with remainder over: *Held* that A. took an absolute interest in the residue.—*Re Barker's Trusts*, 52 L.J. Ch. 565; 48 L.T. 573.

(v.) **Ch. Div. V. C. B.**—*Construction Charge of Testamentary Expenses on Realty—Costs of Probate Action.*—Testatrix charged her real estate in exoneration of her personalty with testamentary expenses: *Held* that the costs of an action disputing the will in the Probate Division, which was compromised, were testamentary expenses.—*Brown* v. *Burdett*, 48 L.T. 753.

(vi.) **Ch. Div. K. J.**—*Construction - Codicil—Confirmation—Implied Revocation of Intermediate Codicil.*—Testator made a codicil to his will in 1878. He made a second codicil giving a specific devise, and in other respects confirming his will, and he made a third codicil giving a pecuniary legacy, and which concluded: "In all other respects I confirm my said will except as altered by a certain codicil made in 1878": *Held* that there was no sufficient intention shown to revoke the devise in the second codicil.—*Follett* v. *Pettman*, L.R. 23 Ch. D. 337; 52 L.J. Ch. 521; 31 W.R. 779.

(vii.) **Ch. Div. P. J.**—*Construction—Contingent Gift—Mixed Fund—Intermediate Rents.*—Where it appears on the face of the will that a testator has mixed up his' real and personal property into one mass, the intermediate rents arising from the realty are to go as if they were income from personalty.—*Williams* v. *Murrell*, L.R. 23 Ch. D. 360; 48 L.T. 661; 31 W.R. 605.

(viii.) **Ch. Div. F. J.**—*Construction—Defeasance—Uncertainty.*—A condition attached to a bequest of heirlooms to go with a title that no person should acquire an absolute interest till twenty-one years after the death

of all persons alive at testator's death who should attain the title: *Held* void for uncertainty.—*Viscount Exmouth* v. *Praed*, L.R. 23 Ch. D. 158; 52 L.J. Ch. 420; 48 L.T. 422; 31 W.R. 545.

(i.) **Ch. Div. V. C. B.**—*Construction—Gift to B., the Wife of A.—Divorce.*—Testator bequeathed an annuity on the death of his son A. leaving his wife B. surviving him, to B., so long as she continued unmarried. Subsequently to the date of the will A. obtained a divorce on the ground of B.'s adultery. B. survived A. and had not re-married: *Held* that she was entitled to the annuity.—*Knox* v. *Wells*, 48 L.T. 655; 31 W.R. 559.

(ii.) **Ch. Div. V. C. B.**—*Construction—Gift to Class—Period for Ascertaining.*—Testator gave his property to trustees on trust to pay certain annuities to his wife and children; and from and after the determination of the estates and interests thereinbefore given, upon trust to divide the property amongst the whole of his grandchildren in equal shares per capita at twenty-one or marriage: *Held* that no distribution could take place till after the death of all the annuitants, and that all grandchildren then existing would be entitled to share.—*Hiscoe* v. *Waite*, 48 L.T. 510.

(iii.) **Ch. Div. K. J.**—*Construction—Gift to Class—Personalty—Heirs—Surviving.*—Bequest of personalty in remainder after life interests upon trust for sale and division among the surviving sisters or sister of A. or their heirs: *Held* that heirs meant next-of-kin, and surviving meant surviving testator.—*Stannard* v. *Burt*, 52 L.J. Ch. 355; 48 L.T. 660.

(iv.) **C. A.**—*Construction—Residuary Gift of Personalty—Lapsed Realty.*—Testatrix gave to C. all her personal property except a certain wharf which she gave to other persons charged with certain debts and annuities. The gift of the wharf failed for remoteness: *Held* that it fell into the residue and went to C.—*Blight* v. *Hartnoll*, L.R. 23 Ch. D. 218; 48 L.T. 543; 31 W.R. 535.

(v.) **Ch. Div. V. C. B.**—*Construction—Undisposed of Residue.*—Testatrix, who died without leaving any next-of-kin or heir-at-law, gave all her property to A. and B., on trust to pay debts and legacies, and she gave the balance to A. and B. equally, and appointed them her executors. By a codicil she revoked the gifts to A. and B. and gave them instead £500 each. At her death part of her personal estate remained undisposed of: *Held* that A. and B. were not entitled to this, but that it went to the Crown.—*Re Hudson's Trusts*, 48 L.T. 562; 31 W.R. 778.

ADDENDA.

(Cases reported only in the *Law Times Reports* and *Weekly Reporter* for July 28th.)

Bankruptcy:—

(i.) **C. A.**—*Composition—Mistake in Debtor's Statement—Action by Creditor.*—A debtor in his statement of affairs, stated P.'s debt as £17 in mistake for £17 15s. The creditors, with the exception of P. resolved to accept a composition; and P. subsequently brought an action against the debtor for the amount of his debt: *Held* that the action was maintainable, and should not be stayed.—*Ex parte Englehart, Re Englehart,* 31 W.R. 802.

(ii.) **C. J. B.**—*Liquidation—Discovery—Bankruptcy Act,* 1869, *s.* 96.—The Court of Bankruptcy has jurisdiction to order the examination for the purposes of discovery of a person not a party to the liquidation proceedings who has had transactions with the liquidating debtor.—*Ex parte Eckersley, Re Lewtas,* 48 L.T. 832.

Bill of Sale :—

(iii.) **Ch. Div. C. J.**—*Rate of Interest—Statement of*—45 *&* 46 *Vict., c.* 43, s. 9.—It is not necessary in order to comply with section 9 of Bills of Sale Act Amendment Act, 1882, to state the rate of interest payable, if the amount payable under the bill is stated.—*Wilson* v. *Kirkwood,* 48 L.T. 821.

Highway:—

(iv.) **Q. B. Div.**—*Dissolution of Highway District—Continued Existence of Board*—25 *&* 26 *Vict., c.* 61, *ss.* 11, 39.—Where a highway district has been dissolved, the highway Board still exists for the purpose of preparing its accounts, and collecting and paying its debts.—*Regina* v. *Essex Justices,* 31 W.R. 813.

(v.) **Q. B. Div**—*Negligence—Action against Surveyors for—Limitation*—5 *&* 6 *Will. IV., c.* 50, *s.* 109—5 *&* 6 *Vict., c.* 97, *s.* 5—38 *&* 39 *Vict., c.* 55, *s.* 144.—*Held* that an action against a corporation, which had been constituted by a local Act surveyors of highways within a certain district, for having negligently left unguarded a hole into which plaintiff drove, which was commenced more than three and less than six months after cause of action accrued, was too late.—*Burton* v. *Mayor of Salford,* 31 W.R. 815.

Lands Clauses Act:—

(vi.) **Ch. Div. V. C. B.**—*Compulsory Sale—Charity School Lands—Municipal Corporation Lands—Consent of Charity Commissioners*—16 *&* 17 *Vict., c.* 137, *s.* 62; 18 *&* 19 *Vict., c.* 124, *s.* 48.—A railway company, under its compulsory powers, took lands belonging to a charity school supported by voluntary contributions, and also lands belonging to a City ward: *Held,* that neither the consent of the Charity Commissioners nor the Lords of the Treasury was necessary in either case, and that neither sale need be completed under the provisions of the Lands Clauses Acts.—*Finnis to Forbes, Ex pte. Finnis, Ex pte. Tower Ward Schools Trustees,* 48 L.T. 813, 814.

Mortgage :—

(i.) **Ch. Div. V. C. B.**—*Administration Action—Mortgage pending Notice—Stop Order—Priority.*—Pending an administration action, a person entitled to a share in the estate mortgaged it first to A. and then to B. B. gave notice to the trustees of the will of his mortgage, and A. subsequently obtained a stop order on the fund in Court: *Held* that the stop order gave A. priority over B.—*Pinnock* v. *Bailey*, 48 L.T. 811.

Patent :—

(ii.) **Ch. Div. P. J.**—*Infringement—Chemical Process.*—Where letters patent have been obtained for a new result, and the specification describes a process of arriving at that result, which is effectual at the date of the patent, it is an infringement to adopt any other process for the purpose of arriving at the specified result.—*Badische Anilin und Soda Fabrik* v. *Levenstein*, 48 L.T. 822.

Poor Law :—

(iii.) **Q. B. Div.**—*Rate—Overseers of Parish—Authority to oppose Bill in Parliament.*—It is not competent for a vestry to authorise the overseers to oppose a bill in Parliament seeking to charge the poor-rates with certain liabilities, and the costs of the overseers in so opposing a bill cannot be charged on the poor-rate.—*Ex parte Sibley*, 31 W.R. 811.

Practice :—

(iv.) **C. A.**—*Concurrent Actions—Transfer—Ord.* 51, *r.* 2.—On appeal from Fry, J. (see iv., p. 104) this question was compromised.—*Ladd* v. *Puleston*, 31 W.R. 802.

(v.) **Ch. Div. V. C. B.**—*Pleading—Amendment—Demurrable Petition.*—Evidence having been gone into on a winding-up petition, the respondent's counsel raised the question that the petition was demurrable. The Court gave leave to amend.—*Re White Star Gold Mining Co.*, 48 L.T. 815.

Settlement :—

(vi.) **Ch. Div V. C. B.**—*Tenant for Life under Settled Land Act*, 1882.—The trustees of a will were directed to enter into possession and receipt of rents of property and to pay thereout interest on mortgages and an annuity, and to pay the balance to A. and his assigns during his life: *Held* that A. was, under sec. 58, clause 1 of Settled Land Act, a person who had the powers of a tenant for life under the Act.—*Re Jones's Estate*, 48 L.T. 812.

Solicitor :—

(vii.) **C. A.**—*Privilege from Arrest.—Attachment for Contempt.*—Decision of Q. B. Div. (see ii., p. 118) affirmed.—*Re Freston*, 31 W.R. 804.

Vendor and Purchaser :—

(viii.) **C. A.**—*Sale by Trustees.—Receipt of Purchase Money.—Conveyancing Act*, 1881, *s.* 56 (i.)—Section 56, sub.-sec. 1, of Conveyancing Act, 1881, does not justify trustees who are selling property in permitting their solicitors to receive the purchase money.—*Re Bellamy and Metropolitan Board of Works*, 48 L.T. 801.

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By HENRY M. KEARY, of Lincoln's Inn, Barrister-at-Law.

Administration:—

(i.) **C. A.**—*Executor—Duty to Recover Debt—Wilful Neglect or Default.*—At the time of testator's death, in March 1878, W. was indebted to him on promissory notes, and was applied to by the executors for payment. He stated that he could only pay by selling his real estate, which was sufficient to pay the debt after discharging mortgages; and after further pressure offered the estate for sale, and withdrew it, being unable to obtain an adequate price. He then obtained further advances on the estate from the mortgagees, but did not pay the executors; and in January, 1880, filed a liquidation petition: *Held* that the executors were not liable for the loss of the money due from W.—*Jones* v. *Owens*, 47 L.T. 61.

(ii.) **Ch. Div. K. J.**—*Inquiry as to persons entitled—Minutes of Judgment.*—Where testator has left property to a number of persons by various class descriptions, in an ordinary administration action the proper course is to insert in the judgment a general inquiry as to who are entitled to the estate, and not a series of inquiries as to the different classes.—*Brown* v. *Stone*, 30 W.R. 923.

Agreements and Contracts:—

(iii.) **Ch. Div. K. J.**—*Covenant not to Revoke Will—Restraint of Marriage—Wills Act,* 1837, *ss.* 18, 20.—A covenant not to revoke a will is not void on the grounds of public policy, but will be construed as a covenant not to revoke it by any means except marriage.—*Robinson* v. *Ommaney*, 47 L.T. 78; 30 W.R. 939.

(iv.) **C. A.**—*Hire of Shootings—Interest in Land—Statute of Frauds, s.* 4.—A grant of a right to shoot over land and to take away part of the game killed is a grant of an interest in land within sec. 4 of Statute of Frauds.—*Webber* v. *Lee*, L.R. 9 Q.B.D. 315; 51 L.J. Q.B. 485; 30 W.R. 866.

(v.) **C. A.**—*Sale of Medical Practice—Agreement by Letter—Reference to Formal Contract—Specific Performance.*—Defendant agreed by letter to

* Cases reported only in the *Law Times Reports* for October 28th, are postponed till the next Quarter's Digest.

purchase a medical practice from plaintiff on certain terms, adding in his letter that he should be ready to pay the deposit money on receipt of corrected agreement, and that he should expect plaintiff to introduce him to his patients during the three first months if necessary. No formal agreement was ever signed, and afterwards defendant refused to complete: *Held* that as the time for commencement of purchase was left uncertain, and the three months' introduction was not agreed to, and as a formal agreement was contemplated by the parties, no binding contract had been entered into.—*May* v. *Thompson*, L.R. 20 Ch. D. 705.

Arbitration:—

(i.) **Q. B. Div.**—*Local Government Board—Power to State Special Case—17 & 18 Vict., c.* 125, *s.* 5; 38 & 39 *Vict., c.* lxiii., *s.* 93.—The reference of disputes between a local board and any constituent authority or parish to the Local Government Board for decision, is not a reference by consent within sec. 5 of Common Law Procedure Act, 1854.—*Bexley Local Board* v. *West Kent Sewerage Board*, 51 L.J. Q.B. 456.

(ii.) **C. A.**—*Reference—Stay of Proceedings—Private Act.*—An insurance company's private Act provided that any question arising under any policy should, if either party required it, be referred to arbitration under the Act, and that if a policy-holder commenced any action, a judge might, on the application of the company, upon being satisfied that no sufficient reason existed why the matter ought not to be referred, stay proceedings. An action having been brought by a policy holder, the company obtained an order to stay proceedings in order that the dispute might be referred: *Held* that the burden lay on the plaintiff to show that a sufficient reason existed against the reference of the dispute.—*Hodgson* v. *Railway Passengers Assurance Co.*, L.R. 9 Q.B.D. 188.

Bankruptcy:—

(iii.) **C. A.**—*Act of Bankruptcy—Trader—Bankruptcy Act*, 1869, *s.* 6 (3).—In sec. 6, sub-sec. 3, of Bankruptcy Act the words "being a trader" mean being a trader at the time when the act of bankruptcy is committed.—*Ex parte McGeorge, Re Stevens*, L.R. 20 Ch. D. 697; 30 W.R. 817.

(iv.) **C. A.**—*Appeal—Time—Payment of Deposit on Appeal—Bankruptcy Rules*, 1870, *r.* 145; 1878, *r.* 2.—On appeals from the Chief Judge to the Court of Appeal the registrar should give a direction to the Bank of England to receive the deposit payable on the entry, and ought not to enter the appeal until he receives from the Bank a certificate that the money has been paid.—*Ex parte Luxon, Re Pidsley*, L.R. 20 Ch. D. 701.

(v.) **C. A.**—*Appeal Ex parte—Service of Notice on Registrar—Appearance—Costs.*—Notice of an appeal from a Registrar acting as Chief Judge, ought not to be served on the Registrar, though the appeal be *ex parte*; and if he appear on the hearing, he will not get his costs.—*Ex parte Izard, Re Moir*, L.R. 20 Ch. D. 703; 30 W.R. 861.

(vi.) **C. J. B.**—*Assignment by Bankrupt of Books of Account—Bankruptcy Act*, 1869, *s.* 22—*Bankruptcy Rules*, 1870, *r.* 110.—A trustee in bankruptcy is not entitled to the possession of books of account kept by the bankrupt, which he had assigned to a third party for value before bankruptcy.—*Ex parte Wood, Re West*, 46 L.T. 823.

(vii.) **Ch. Div. K. J.**—*Bankruptcy before* 1869—*Contingent Debt—Non-Trader*—12 & 13 *Vict., c.* 106, *ss.* 177, 178; 24 & 25 *Vict., c.* 134, *s.* 161.—By the bankruptcy laws in force before the Bankruptcy Act, 1869, contingent claims could not be proved in the bankruptcy of a non-trader, and were, therefore, not affected by his discharge.—*Robinson* v. *Ommaney*, 47 L.T. 78; 30 W.R. 939.

(i.) **Q. B. Div.**—*Execution for more than £50—Reduction by Payment on Account—Bankruptcy Act*, 1869, *s.* 87.—After seizure under a *fi. fa.* for a sum exceeding £50 payments were made on account by the debtor reducing the amount below £50. The debtor afterwards was made a bankrupt, and his trustee paid the balance of the debt to the sheriff, who gave up possession: *Held* that the creditor was entitled to the balance, as being the proceeds of an execution for a sum not exceeding £50.—*Mostyn* v. *Stock*, L.R. 9 Q.B.D. 432.

(ii.) **Q. B. Div.**—*Lease—Disclaimer—Bankruptcy of Assignee—Liability of Lessee.*—The disclaimer of a lease by the trustee in bankruptcy of an assignee of the lease, does not destroy the liability of the original lessee to the lessor, nor prevent the lessee from recovering, from the surety to him for the bankrupt, rent due since the disclaimer.—*Harding* v. *Preece*, L.R. 9 Q.B.D. 281; 51 L.J. Q.B. 515; 47 L.T. 100.

(iii.) **C. J. B.**—*Lease—Disclaimer—Distress—Rent—Covenants on Lease—Bankruptcy Act*, 1869, *ss.* 23, 24.—After the tenant of a farm under a lease had presented a liquidation petition, and before the adjudication order thereon, the landlord brought an action to recover possession of the farm, and also distrained for rent accrued due during the same interval. Subsequently the trustee in the liquidation dislaimed the lease: *Held* that the distress was bad under sec. 34 of Bankruptcy Act, and that the effect of the disclaimer was as if the lease had never existed, therefore the landlord was not entitled to the benefit of covenants in the lease giving him the right to buy hay and straw on the farm at a certain price.—*Ex parte Morrish, Ex parte Dyke, Re Morrish*, 47 L.T. 26; 30 W.R. 952.

(iv.) **C. A.**—*Lease—Liability of Trustee for Rent—Bankruptcy Act*, 1869, *ss.* 17, 23.—A trustee in liquidation who has not disclaimed a lease held by the debtor, is liable for rent which becomes due after his appointment as trustee, but not for rent due before such appointment.—*Titterton* v. *Cooper*, L.R. 9 Q.B.D. 473; 51 L.J. Q.B. 472; 46 L.T. 870; 30 W.R. 866.

(v.) **C. J. B.**—*Liquidation—Discharge of Trustee—Unliquidated Damages—Right to prove for.*—A creditor of a liquidating debtor tendered a proof for a certain amount, which was admitted, and also claimed to prove for unliquidated damages, but named no amount. At a subsequent meeting of creditors a dividend was declared payable on a certain date, and a resolution passed to release the trustee. The creditor afterwards sent in a proof for a certain amount for the unliquidated damages: *Held* that his remedy, if any, was, in the absence of fraud, by an action at law outside the bankruptcy.—*Ex parte Barnard, Re Gill*, 46 L.T. 824.

(vi.) **C. A.**—*Liquidation Resolutions—Refusal to Register—Return of Stamp Duty.*—The Court has no power to order the return of *ad valorem* stamp duty paid on the presentation of liquidation resolutions, registration of which has been refused.—*Ex parte Izard, Re Moir*, L.R. 20 Ch. D. 703; 30 W.R. 861.

(vii.) **C. A.**—*Property of Bankrupt—Pension of Ex-Colonial Judge—Bankruptcy Act*, 1869, *ss.* 15, 90.—A pension granted to an ex-judge of a Crown colony, and dependent upon the annual vote of the Colonial Legislature, vests in his trustee in bankruptcy, but subject to the control of the Court over its application conferred by sec. 90 of Bankruptcy Act, as being income receivable by the bankrupt.—*Ex parte Huggins, Re Huggins*, 30 W.R. 878.

(viii.) **C. A.**—*Trustee's Discretion—Contingent Reversionary Interest—Sale—Bankruptcy Act*, 1869, *s.* 20.—Subject to resolutions of creditors, a trustee in bankruptcy has a discretion as to when and how he will sell a contingent reversionary interest of the bankrupt which will not be

interfered with by the Court, unless the trustee is acting as no reasonable man would act.—*Ex parte Lloyd, Re Peters*, 47 L.T. 64.

Bill of Sale:—

(i.) **C. J. B.**—*Registration—True Copy—Grantor's Residence—Bankruptcy—Order and Disposition—Bankruptcy Act*, 1869, s. 15 (5); 41 & 42 Vict., c. 31, ss. 8, 10, 20.—In a copy bill of sale filed on registration the words "third day of each month" were omitted: *Held* that it was a true copy within sec. 10, sub-sec. 2, of Bills of Sale Act, 1878. The affidavit stated as the grantor's residence, the place where he resided when he gave the bill. He had since absconded: *Held* that his residence was sufficiently described. The bill was registered within the seven days limited by sec. 8, but in the meantime the grantor committed an act of bankruptcy on which an adjudication was obtained: *Held* that the goods comprised in the bill could not be claimed by the trustee in bankruptcy, as being in the debtor's order and disposition previous to the registration, and that they passed to the grantee.—*Ex parte Kahen, Re Hewer*, 46 L.T. 856; 30 W.R. 954.

Building Society:—

(ii.) **Q. B. Div.**—*Borrowing Powers—Liability of Directors*—37 & 38 *Vict.*, c. 42, ss. 15, 16, 43.—By the rules of a terminating building society the amount to be received on deposit or loan was limited to two-thirds of the amount for the time being secured to the society by mortgages from its members: *Held*, in an action against the directors under sec. 43 of Building Societies Act, 1874, that they were personally liable for sums received by the society on deposit or loan in excess of this limit, though the amount received did not exceed twelve months' subscriptions on its shares: *Held*, also, that a loan at interest to the society from its bankers secured by deposit of title-deeds, and made by allowing the society to overdraw its account, was a loan within sec. 15.—*Looker* v. *Wrigley*, L.R. 9 Q.B.D. 397.

Charity:—

(iii.) **C. A.**—*Action under trusts of Charity Deed—Place of Religious Worship—Consent of Charity Commissioners*—16 & 17 *Vict.*, c. 137, ss. 17, 62; 18 & 19 *Vict.*, c. 81, s. 9.—An action to administer the trusts of a deed regulating the mode of worship in a building registered and used as a place of meeting for religious worship, can be brought without the consent of the Charity Commissioners.—*Glen* v. *Gregg*, 51 L.J. Ch. 783.

(iv.) **C. A.**—*Scheme—Leasing Powers*—16 & 17 *Vict.*, c. 137, s. 21.—A scheme for the administration of a charity approved by the Court in 1856, authorized the granting of building leases on certain terms with the sanction of the Charity Commissioners: *Held* that the clause as to granting leases should be struck out, so as to leave the granting of leases to be carried on under the powers conferred by the Charitable Trusts Act, 1853.—*Re Smith's Charity*, L.R. 20 Ch. D. 516; 30 W.R. 929.

Colonial Law:—

(v.) **P. C.**—*Canada—Powers of Dominion Parliament*—30 *Vict.*, c. 3, ss. 91, 92.—The Parliament of Canada passed an Act prohibiting the traffic in intoxicating liquors, except under certain restrictions in any county or city the inhabitants of which chose to adopt the provisions of the Act: *Held* that this Act was within the powers conferred on the Parliament of Canada by sec. 91 of British North America Act, 1867.—*Russell* v. *The Queen*, 46 L.T. 889.

(i.) **P. C.**—*Cape of Good Hope—Colonial Church—Connection with Church of England.*—The Church of South Africa by its constitution adopted the standards of faith and doctrine and the formularies of the Church of England, with the proviso that in the interpretation of such standards and formularies it should not be held to be bound by decisions relating thereto, other than those of its own ecclesiastical tribunals: *Held* that the Church of South Africa did not remain in connection with the Church of England.—*Merriman* v. *Williams*, 47 L.T. 51.

Company :—

(ii.) **Q. B. Div.**—*Illegal Association—Mutual Loan Society—Right of Action—Companies Act*, 1862, *s.* 4.—A mutual benefit society of more than twenty persons, formed to carry on the business of money-lending with the object of acquiring gain by the members, requires to be registered under the Companies Act, 1862, though it lend only to its own members; and if unregistered, a promissory note granted to such an association as security for a loan cannot be sued upon.—*Jennings* v. *Hammond*, L.R. 9 Q.B.D. 225; 51 L.J. Q.B. 493.

(iii.) **Ch. Div. C. J.**—*Increase of Capital—Power to Issue Shares at Discount.*—A limited company's articles provided that all new shares should be offered to the members in proportion to the existing shares held by them, and in the event of any shares so offered being declined, the directors might dispose of them in such manner as they might think most beneficial to the company: *Held* that the directors had power to dispose of shares at a discount.—*Re Ince Hall Rolling Mills Co.*, 30 W.R. 945.

(iv.) **Ch. Div. V. C. B.**—*Payment of Dividends—Preference Shares—Net Profits—Articles of Association.*—A company's articles provided that net profits should be applied in paying certain dividends on preference and ordinary shares, that no distribution of profits was to be made without the consent of a general meeting, and in case of dispute as to the amount of net profits, the decision of the company in general meeting should be final. The whole of the capital of the company had been sunk in buying a certain concession which would expire in a certain time. An ordinary shareholder brought an action to restrain the directors from paying dividends to preferred shareholders without providing for replacing the capital: *Held* that the Court had no power to interfere.—*Lambert* v. *Neuchâtel Asphalte Co.*, 47 L.T. 73; 30 W.R. 913.

(v.) **Ch. Div. F. J.**—*Priority of Debentures—Deeds of Even Date.*—On the same day a company issued 150 debentures, of which 100 were issued to one person, and subsequently fifty were issued to another person: *Held* that the first 100 debentures were entitled to priority over the other fifty.—*Gartside* v. *Silkstone & Dodworth Coal Co.*, 47 L.T. 76.

(vi.) **Q. B. Div.**—*Transfer of Shares—Company's Lien—Companies Act*, 1862, *Sch. I., Table A, r.* 10.—The provision in Rule 10 of Table A of Companies Act, 1862, that the company may decline to register any transfer of shares made by a member indebted to them, enables the company to decline to register the transfer if the member is indebted to them on any account.—*Ex parte Stringer*, L.R. 9 Q.B.D. 436.

(vii.) **Ch. Div. K. J.**—*Winding-up—Contributory—Allotment—Withdrawal of Application—Compromise—Delegation of Directors' Powers.*—M., having applied for shares in a company, wrote withdrawing his application; but the letter of allotment was posted before the company received his letter: *Held* that the contract to take shares was complete. The Company's articles empowered the directors to delegate their powers to committees of members of their body, and the interpretation clause provided that words importing the plural should include the singular:

Held that it was competent for the directors to delegate to their chairman their powers of compromising claims.—*Maclagan's Case, Re Scottish Petroleum Co.*, 46 L.T. 880.

(i.) **Ch. Div. F. J.**—*Winding-up—Creditor's Petition—Opposition of other Creditors—Companies Act*, 1862, *s.* 91.—A winding-up petition presented by a mortgagee of a company's property, and opposed by the majority in value of the other creditors, was ordered to stand over for six months, or until the petitioner took steps to enforce his mortgage, the company undertaking to give notice of any other winding-up proceedings, and not to wind up voluntarily.—*Re Great Western Coal Consumers Co.*, 51 L.J. Ch. 743; 46 L.T. 875; 30 W.R. 885.

(ii.) **Ch. Div. C. J.**—*Winding-up—Shareholders' Petition*—30 & 31 *Vict.*, c. 131, *s.* 40.—A petitioning shareholder was placed on the company's register in May, 1881; he filed a liquidation petition in August, and a trustee was appointed in September, and in January, 1882, the trustee re-assigned the shares to the petitioner, they having always stood in his name. The petition was presented on February 28th: *Held* that the petitioner had held the shares for a period of six months during the eighteen months previously to the commencement of the winding-up, within sec. 40 of Companies Act, 1867.—*Re Wala Wynaad Gold Mining Co.*, 47 L.T. 128; 30 W.R. 915.

(iii.) **Ch. Div. C. J.**—*Winding-up—Shareholder's Petition—Commencing Business.*—A fire insurance company was formed in January, 1881, and was empowered to carry on business both in this country and abroad. The head office was in London; but no insurances had been effected in England, though insurances to a considerable amount had been effected in France. No profits had been transmitted to England: *Held*, on a shareholders' petition, that the company could not be wound up on the ground that it had not commenced business within a year.—*Re Capital Fire Insurance Association*, 47 L.T. 123; 30 W.R. 941.

Copyright :—

(iv.) **C. A.**—*Infringement—Title of Newspaper.*—*Held* that the title *Sporting Chronicle* for a newspaper published at Newcastle was not an infringement of the title *Newcastle Daily Chronicle.*—*Cowen* v. *Hulton*, 46 L.T. 897.

(v.) **Q. B. Div.**—*Musical Composition—Sole Liberty of Performance—Performance in Public Place*—5 & 6 *Vict.*, c. 45, *s.* 20.—A musical composition was publicly performed without the consent of the proprietor: *Held* that the performance was contrary to sec. 20, of 5 & 6 Vict., c. 45, though not in a place of dramatic entertainment.—*Wall* v. *Taylor; Do.* v. *Martin*, 51 L.J. Q.B. 547; 47 L.T. 47; 30 W.R. 948.

Crimes and Offences :—

(vi.) **Q. B. Div.**—*False Imprisonment—Notice of Action—Mistake as to Date of Arrest*—24 & 25 *Vict.*, *c.* 96, *s.* 113.—In an action for false imprisonment against a police-constable, plaintiff in his statutory notice to the defendant assigned the 13th April as the date of his arrest, whereas it was proved to have been on the 12th: *Held* that the notice was, nevertheless, sufficient and valid.—*Green* v. *Broad*, 46 L.T. 888.

(vii.) **Q. B. Div.**—*Riot—Unlawful Assembly.*—A lawful assembly is not rendered unlawful by reason of the knowledge of those taking part in it that opposition will be raised to it, which will probably give rise to a breach of the peace by those creating the opposition.—*Beatty* v. *Gillbanks*, L.R. 9 Q.B.D. 308; 51 L.J. M.C. 117.

Defamation :—

(i.) **Ch. Div. K. J.**—*Libel on Friendly Society—Injunction.*—An injunction will be granted upon an interlocutory application to restrain the publication of matter tending to injure a friendly society.—*Hill* v. *Hart Davis*, 47 L.T. 82.

Easement :—

(ii.) **Q. B. Div.**—*Right of Way—Ingress, Egress and Regress.*—A railway company by a deed of conveyance of a close of land granted to the grantee of the land a right of free ingress, egress and regress to and from certain private roads bounding the close and leading to the railway station and on to the public highways: *Held* that the grantee was entitled to pass between the close and the public roads by means of the private roads, as well as between the close and the station.—*Somerset* v. *G. W. Rail. Co.*, 46 L.T. 883.

(iii.) **Q. B. Div.**—*Right to Support—Easement of Necessity—Implied Reservation.*—There is no need of an express reservation of an easement of necessity in a conveyance of the property to be effected by the easement; such reservation is a matter of legal presumption.—*Shubrook* v. *Tafnell*, 46 L.T. 886.

Ecclesiastical Law :—

(iv.) **Q. B. Div.**—*Church Rates—Contract for Valuable Consideration—31 & 32 Vict., c. 109, s. 5.*—An arrangement embodied in a private Act, and based on good and valuable consideration, which provides for the levying of church rates, is a contract between the parties affected within sec. 5 of 31 & 32 Vict., c. 109.—*Bell* v. *Bassett*, 47 L.T. 19.

(v.) **P. C.**—*Representation by Churchwarden—New Churchwarden — 37 & 38 Vict., c. 85, s. 8.*—When a representation under the Public Worship Regulation Act, 1874, in which the incumbent of a parish church is the party complained of, is made by a churchwarden of the parish, who subsequently ceases to be churchwarden, the Court has no power to substitute the newly-elected churchwarden as complainant, or give him leave to intervene.—*Harris* v. *Perkins*, 47 L.T. 69.

Election :—

(vi.) **C. A.**—*Municipal Election—Corrupt Practices—Petition—Payment of Expenses—35 & 36 Vict., c. 60, s. 22.*—The Lords Commissioners of the Treasury having paid the amount of the remuneration of the barrister engaged in the trial of an election petition against the return of a borough councillor, required the borough treasurer to repay the amount out of the borough funds as required by sec. 22 of 35 & 36 Vict., c. 60. A rate was accordingly levied; but the Commissioners on hearing from the barrister that he intended to visit all the costs upon the councillor, cancelled their certificate, and the rate was returned to the ratepayers. Afterwards it appeared that the barrister had made no written order for payment of the costs under sec. 22, and the Commissioner issued a fresh certificate: *Held* that the Q. B. Div. could not amend the barrister's order; and that the Commissioners were entitled to a peremptory mandamus compelling the borough treasurer to pay them the amount they had paid.—*Regina* v. *Maidenhead Corporation*, L.R. 9 Q.B.D. 494; 51 L.J. Q.B. 444.

Friendly Society :—

(vii.) **Ch. Div. F. J.**—*Trade Union—Amalgamation—Unregistered Society—34 & 35 Vict., c. 31, ss. 3, 4; 39 & 40 Vict., c. 22, s. 12.*—A trade union society not registered under the Trade Union Act, 1871, sought to amalgamate with other societies. Some of the members of the society

brought an action to restrain the amalgamation and prevent the payment of the society's funds to the amalgamated society. The society's rules did not authorize amalgamation, and provided benefits for members: *Held* that the Act of 1871 legalized such societies for all purposes, but forbade the enforcement of certain agreements specified in sec. 4; that an action of this nature was not excepted from enforcement by sec. 4; and that the non-registration of the society did not make it illegal.—*Wolfe* v. *Matthews*, 47 L.T. 158; 30 W.R. 838.

Husband and Wife :—

(i.) **C. A.**—*Divorce—Alimony—Maintenance—Husband Abroad—20 & 21 Vict., c. 85, s. 32; 29 & 30 Vict., c. 32.*—When a decree *nisi* for dissolution of marriage has been obtained by the wife, the Court has no power either under Divorce Act, 1857, s. 32, or Divorce Act, 1866, to order monthly payments to be made to her by a husband residing abroad, but only to order him to secure to her a gross or annual sum of money.—*Medley* v. *Medley*, L.R. 7 P.D. 122; 30 W.R. 937.

(ii.) **P. D. A. Div.**—*Divorce—Judicial Separation—Unreasonable Delay—20 & 21 Vict., c. 85, s. 31.*—A husband obtained a decree for judicial separation by reason of adultery, and three years afterwards petitioned for a dissolution by reason of subsequent adultery with the same co-respondent: *Held* that there had been unreasonable delay within sec. 31 of Divorce Act, 1857, and *decree nisi* refused.—*Mason* v. *Mason*, 47 L.T. 25.

(iii.) **P. D. A. Div.**—*Divorce—Rectification of Settlement—Mortgage by Husband.*—In a wife's suit for dissolution of marriage, the husband, before the decree *nisi* had been pronounced, charged his life interest under the marriage settlement with the costs incurred by his solicitors in defending the suit. On an application by the wife to vary the settlement by extinguishing the husband's life interest: *Held* that this must be done subject to the mortgage granted to the husband's solicitors.—*Wigney* v. *Wigney*, 47 L.T. 129.

(iv.) **P. D. A. Div.**—*Separation Deed—Allowance to Wife—Subsequent Adultery.*—By a separation deed a wife agreed to accept certain sums for her support, and covenanted not to sue her husband for any further maintenance. She subsequently discovered that he was guilty of incestuous adultery, and obtained a decree *nisi* for dissolution: *Held* that she was entitled to the usual order for permanent maintenance.—*Morrall* v. *Morrall*, 47 L.T. 50.

Infant :—

(v.) **Ch. Div. K. J.**—*Maintenance—Contingent Interest in Property.*—An infant was entitled contingently to property on her attaining twenty-one, or being married. The Court sanctioned a scheme for payment of premiums on a policy payable in case of her death before twenty-one or marriage, and payment of past and future maintenance; such payments being secured by a mortgage on the policy, and a charge on her contingent interest.—*Re Bruce*, 30 W.R. 922.

(vi.) **Ch. Div. K. J.**—*Ward of Court—Religion.*—Where acts of a deceased Protestant father indicated an intention that his child should be brought up in the Roman Catholic faith, and the Court thought it more beneficial for the child, his education in that faith was continued.—*Re Clarke*, 51 L.J. Ch. 762; 47 L.T. 84.

Landlord and Tenant :—

(vii.) **C. A.**—*Agreement for Lease—Estate of Lessee in Possession—Judicature Act, 1873, s. 25 (11).*—A tenant in possession under an agreement for a lease, has now no longer a legal tenancy from year to year, and an

equitable tenancy under the agreement, but he is in the same position in all respects as if he were a lessee under a lease granted in the terms of the agreement.—*Walsh* v. *Lonsdale*, 46 L.T. 858.

(i.) **C. A.**—*Assignment of Yearly Tenancy—Assignment of Reversion—4 & 5 Ann., c. 3, s. 9.*—A yearly tenant under a parol demise assigned by deed all his estate and interest to a third party, but the landlord refused to accept the assignee as tenant, and afterwards mortgaged his reversion. The assignee never attorned to the landlord or mortgagee: *Held* that the mortgagee could not maintain an action for rent against the original tenant.—*Allcock* v. *Moorhouse*, L.R. 9 Q.B.D. 366; 30 W.R. 871.

(ii.) **C. A.**—*Lease—Covenant to pay Rates and Assessments—Paving Rate for New Street—25 & 26 Vict., c. 102, s. 96.*—A tenant under a lease of a house in a new street within the metropolitan district, covenanted to pay the district rates and assessments which were, or should be taxed, rated, assessed, or imposed upon the demised premises, or upon or payable by the occupier in respect thereof: *Held* that he was not liable to repay the amount paid by the landlord in respect of a rate made by the vestry for paving the street.—*Allum* v. *Dickinson*, 30 W.R. 930.

(iii.) **C. A.**—*Lease—Furnished House—Agreement as to Paying for Damage to.*—The lessee of a furnished house agreed in the event of breakage or damage to the house and furniture to make good and pay for the same; the amount of such payment, if in dispute, to be referred to and settled by two valuers or their umpire: *Held* that the lessor could not maintain an action for breakage until the sum payable for the same had been settled in the manner provided by the agreement.—*Babbage* v. *Coulburn*, 46 L.T. 794.

(iv.) **Q. B. Div.**—*Lodger's Goods—Distress—34 & 35 Vict., c. 79.*—A person may be a lodger within the meaning of the Lodgers' Goods Protection Act, 1871, though he has the right of exclusively occupying the greater part of the premises, and has separate and uncontrolled power of ingress and egress, and neither the landlord nor his agent sleeps or resides in the house.—*Ness* v. *Stephenson*, L.R. 9 Q.B.D. 245.

Lands Clauses Act:—

(v.) **Q. B. Div.**—*Arbitration—Costs—Payment Due before Conveyance.*—When the amount of compensation to the owner of lands taken under the Lands Clauses Acts is settled by arbitration, and the costs of the arbitration awarded to the owner, the taxed costs become payable to him within a reasonable time, and the execution of the conveyance by him is not a condition precedent to the payment of the costs.—*Capell* v. *G. W. Rail. Co.*, 9 Q.B.D. 459.

Master and Servant:—

(vi.) **Q. B. Div.**—*Hiring at Yearly Salary—Notice.*—A hiring at a salary of £500 a year is *primâ facie* a hiring for a year certain.—*Buckingham* v. *Surrey and Hants Canal Co.*, 46 L.T. 885.

(vii.) **Q. B. Div**—*Injury to Workman—Notice of—43 & 44 Vict., c. 42, s. 7.*—A notice of action under the Employers' Liability Act, 1880, sec. 7, is good, which in substance states the cause of injury, and which, though defective, does not, in the opinion of the judge, prejudice or mislead the defendant.—*Clarkson* v. *Musgrave*, L.R. 9 Q.B.D. 386; 51 L.J. Q.B. 525.

Mortgage:—

(viii.) **Ch. Div. V. C. H.**—*Priority—Successive Mortgages—Possession of Title Deeds.*—The rule of equity postponing a first mortgagee who neglects to obtain possession of the title deeds to a subsequent incum-

brancer without notice, operates for the benefit of every subsequent mortgagee who has advanced his money in the belief that the second mortgagee was in fact a first mortgagee.—*Clarke* v. *Palmer*, 51 L.J. Ch. 634.

Municipal Law :—

(i.) **Q. B. Div.**—*Elementary Education—Contributory District—Expenses of School Attendance Committee—33 & 34 Vict., c. 75, ss. 50, 74; 39 & 40 Vict., c. 79, s. 32.*—The guardians of a union comprising the parish of C., which had no school board of its own, but by order of the education department, contributed to the schools of a district which had a school board, appointed a school attendance committee under secs. 7, 32 of Elementary Education Act, 1876, for C. and other parishes in the Union, and under sec. 31 claimed a proportion of the expenses of the committee from C.: *Held* that C. was liable.—*Regina* v. *Vane*, 51 L.J. M.C. 114; 47 L.T. 21.

(ii.) **C. A.**—*Land Purchased for Prison Purposes—28 & 29 Vict., c. 126, ss. 23, 24; 40 & 41 Vict., c. 21, ss. 48, 60.*—A deed of conveyance recited that certain land was purchased and held upon trust by defendant for the Justices of Middlesex for the purposes of the Prisons Act, 1865; and upon or for no other trust or purposes: *Held* that the land vested in the Prison Commissioners under secs. 48, 60 of Prison Act, 1877.—*Prison Commissioners* v. *Clerk of Peace for Middlesex*, L.R. 9 Q.B.D. 506; 51 L.J. Q.B. 433; 46 L.T. 861; 30 W.R. 881.

Partnership :—

(iii.) **H. L.**—*Retiring Partner—Liability for Debt of Firm—Notice—Estoppel—Election.*—A., a partner in a firm of A. B. & Co., having retired, B. entered into partnership with C., under the same style as before A.'s retirement; and J., an old customer of the firm, continued to supply goods to the new firm before receiving notice of the change of partners; and after receiving such notice he continued to supply goods as before. The new firm having gone into liquidation J. proved for the balance due to him for goods supplied both before and after the notice, and then brought an action against A. for the price of the goods supplied before the notice: *Held* that J. had an option to sue either A. and B. or B. and C., and that by proving in bankruptcy against B. and C. he had made his election and could not sue A.—*Scarf* v. *Jardine*, 30 W.R. 893.

Poor Law :—

(iv.) **Q. B. Div.**—*Rate—Occupation—Railway Book-Stalls.*—Book-stalls erected by newsagents at a railway station, under an agreement with the Railway Company under which they have the exclusive right to sell newspapers, &c., at the station, in consideration of a yearly payment, are not rateable to the poor-rate.—*Smith* v. *Lambeth Assessment Committee*, 51 L.J. M.C. 106.

(v.) **Q. B. Div.**—*Rateable Value—Buildings occupied by Municipal Corporation.*—The gross estimated rental and rateable value of buildings occupied by municipal corporations and other public bodies are to be ascertained, for the purposes of parochial assessment, by reference to the amount of rent which a tenant, unfettered as to user, would give, if the premises were in the market.—*Chorlton Overseers* v. *Chorlton Union*, 51 L.J. Q.B. 458; 47 L.T. 96.

Power of Appointment :—

(vi.) **C. A.**—*Portions—Appointment of—Fraud on Power—Covenant for Quiet Enjoyment.*—A tenant for life of realty having power to charge portions for younger children, to be vested at such times as he should

think fit, charged portions in favour of three daughters of tender ages, and directed the portions to be immediately vested, and to be payable subject to his life interest, at twenty-one or marriage. Two of the daughters died, and he assigned their portions, subject to his life interest, to plaintiff for value: *Held* that the appointment was valid; and that the portions of the daughters who died descended to the tenant for life.—*Henty* v. *Wrey*, 30 W.R. 850.

(i.) **Ch. Div. V. C. B.**—*Revocation of Appointment—Release—Fraud on Power.*—A fund stood settled in trust for such children of A. as he should appoint, and in default of appointment to the children equally. There were four children of whom one died unmarried and intestate in 1879, leaving A. his legal personal representative. A. appointed by deed in favour of the surviving children, reserving a power of revocation. He subsequently revoked this appointment and proposed to execute an absolute release of his power, so that he would become entitled to the share of the deceased child: *Held* that this would not constitute a fraud on the power.—*Shirley* v. *Fisher*, 47 L.T. 109.

Practice:—

(ii.) **Ch. Div. F. J.**—*Accounts—Executor—Wilful Default—District Registry—Report—Judicature Act*, 1873, *s.* 66—*Ord.* 3, *r.* 8; 15, *r.* 1; 35, *rr.* 1*a*, 4.—A summary order cannot be made under Ord. 15, r. 1, for an account against an executor on the footing of wilful default. A district registrar has power under Ord. 35, rr. 1a, 4, to make an order for an account under Ord. 15, r. 1; and he can take the account himself if the order so directs, but not otherwise. In making a report to this Court under sec. 66 of Judicature Act, 1873, of the result of an account in an administration action, the District Registrar should adopt the form of a chief clerk's certificate.—*Bennett* v. *Bowen*, L.R. 20 Ch. D. 538; 47 L.T. 114.

(iii.) **C. A.**—*Accounts in Chambers—Adjournment before Judge.*—A party desiring to question the decision of a chief clerk upon an item in accounts being taken in chambers may adjourn the original summons to the judge, without taking out a fresh summons.—*Upton* v. *Browne*, L.R. 20 Ch. D. 731; 30 W.R. 817.

(iv.) **C. A.**—*Appeal—Amending Record of Trial—Ord.* 58, *r.* 5; 59, *r.* 2.—At the trial of an action the jury found certain issues in favour of plaintiff, and the judge reserved judgment. The verdict was entered as a general verdict for plaintiff, but the judge gave judgment for defendant. On appeal, the Court of Appeal amended the record by entering the verdict for plaintiff on the issues only.—*Clack* v. *Wood*, L.R. 9 Q.B.D. 276; 47 L.J. 144; 30 W.R. 931.

(v.) **C. A.**—*Appeal—Staying Proceedings pending—Order to pay Money out of Court.*—An order was made by the Court of Appeal directing a sum of consols in Court to be sold, and the proceeds paid to B. Y. appealed to the House of Lords, and after sale, but before payment out, applied to stay proceedings pending appeal, and to have the money re-invested and retained in Court: *Held* that Y. must undertake, in case he failed on appeal, to make good the difference between the income actually produced by the fund, and interest thereon at £4 per cent. per annum, and to pay the costs of the sale and re-investment.—*Brewer* v. *Yorke*, L.R. 20 Ch. D. 669.

(vi.) **Q. B. Div.**—*Appeal from County Court*—38 & 39 *Vict.*, *c.* 50, *s.* 6.—It is a condition precedent to the right to appeal under sec. 6 of County Courts Act, 1875, that the question of law upon which it is desired to appeal should have been raised before the County Court judge at the trial.—*Clarkson* v. *Musgrave*, L.R. 9 Q.B.D. 386; 51 L.J. Q.B. 525.

(i.) **C. A.**—*Charging Order by Solicitor—Fund in Court—Substituted Service of Summons to Pay Out.*—M. having obtained a charging order under 23 and 24 Vict., c. 127, s. 28, on a sum in Court belonging to defendant, for taxed costs as defendant's solicitor, took out a summons for defendant to show cause why the money should not be paid out to him; and defendant successfully evaded service of the summons. The Court directed a notice of the summons to be put up in the Master's Office, to be advertised in the *Times*, and to be served on two persons who knew defendant.—*Hunt* v. *Austin, Ex parte Mason*, 51 L.J. Q.B. 455.

(ii.) **Ch. Div. F. J.**—*Costs—Action Against Corporation—Joinder of Individual Corporators as Defendants.*—A vestry having resolved to incur certain unauthorised expenditure, an action for an injunction was brought by the Attorney-General at the relation of a ratepayer against the vestry and certain members thereof, who had supported the resolution in favour of the expenditure. An injunction was obtained against the vestry by consent without costs, and without notice to the individual members: *Held* that the individual members could not be ordered to pay the costs, and that the action must be dismissed as against them.—*Attorney-General* v. *Bermondsey Vestry*, 46 L.T. 852; 30 W.R. 872.

(iii.) **C. A.**—*Costs—Appeal.*—Where an appellant is successful on an appeal upon a point not adjudicated upon in the Court below, he will not, generally, be allowed his costs.—*Goddard* v. *Jeffreys*, 46 L.T. 904.

(iv.) **C. A.**—*Costs—Appeal for—Parties—Ord.* 16, *r.* 7.—Trustees of a will brought an action against mortgagees to have a mortgage declared void, and made the beneficiaries under the will also defendants. They succeeded in the action, and the mortgagees were ordered to pay the costs of the beneficiaries: *Held* that the beneficiaries ought not to have been made parties, and that the order as to their costs might be appealed from, and was wrong.—*Cooper* v. *Vesey*, L.R. 20 Ch. D. 611; 47 L.T. 89; 30 W.R. 648.

(v.) **Q. B. Div.**—*Costs—Oral Examination of Party—Ord.* 31, *r.* 10; 55, *r.* 1. —An order was made by the Master at Chambers that plaintiff, who had insufficiently answered interrogatories, should be examined *vivâ voce*, and should pay the costs of the examination: *Held* that the master had jurisdiction to make such order.—*Vicary* v. *G. N. Rail. Co.*, L.R. 9 Q.B.D. 168; 51 L.J. Q.B. 462.

(vi.) **Ch. Div. C. J.**—*Costs—Taxation—Costs of Reference—Attendance—6 & 7 Vict., c.* 73, *s.* 37.—Solicitors proceeding under the common order for taxation must pay the costs of reference, if the party chargeable does not attend the taxation. A person does not attend by writing letters to the taxing master.—*Re Upperton*, 30 W.R. 840.

(vii) **Ch. Div. K. J.**—*Counter-Claim—Ord.* 19, *r.* 3; 22, *r.* 9; 27, *r.* 1.—Where defendant has set up a counter-claim which is calculated to delay the trial of plaintiff's action, the Court or judge will, at plaintiff's instance, direct the counter-claim to be struck out.—*Gray* v. *Webb*, 46 L.T. 913.

(viii.) **Ch. Div. V. C. B.**—*Discovery—Production of Documents—Right to take Copies.*—A party who has a right to production of documents has also a right to take copies of them.—*Pratt* v. *Pratt*, 30 W.R. 837.

(ix.) **Q. B. Div.**—*Judgment against Firm—Action on Judgment—Ord.* 42, *r.* 8.—When judgment has been recovered against a partnership in the name of the firm, plaintiff may bring an action on the judgment against the individual members of the firm.—*Clark* v. *Cullen*, L.R. 9 Q.B.D. 355.

(i.) **C. A.**—*Married Woman—Judgment by Default against—Setting Aside—Delay.*—In an action against a husband and wife, judgment for default of appearance was signed against both in 1880. The wife knew nothing of the nature of the proceedings till November, 1881; and in February, 1882, a summons for committal was served on her, on which an order was made, and she then moved to have the original judgment set aside: *Held* that the judgment was irregular, being a personal judgment against a married woman, and must be set aside notwithstanding the delay.—*Davis* v. *Ballenden*, 46 L.T. 797.

(ii.) **H. L.**—*New Trial—Costs.*—When a verdict of a jury depends upon a question of science which is not fully solved, a new trial may be granted though the preponderance of evidence against the verdict is not so strong as would be required in the case of an ordinary question of fact. Where a new trial is granted on the ground of the verdict being unsatisfactory, it should not be granted conditionally on the applicant paying the costs of the previous trial.—*Metropolitan Asylum Board* v. *Hill*, 47 L.T. 29.

(iii.) **Ch. Div. C. J.**—*Pleading—Admissions—Ord.* 40, *r.* 11.—The statement of claim in a foreclosure action set out the effect of certain deeds and alleged that they were duly executed. The defence craved leave to refer to the deeds when produced, and otherwise did not admit that they were to the effect stated. On motion for judgment on admissions the deeds were produced, and were to the effect stated: *Held* that the execution of the deeds was sufficiently admitted, and that plaintiff was entitled to judgment.—*Barnard* v. *Wieland*, 30 W.R. 947.

(iv.) **P. D. A. Div.**—*Receiver—Surety—Guarantee Society.*—The security of a guarantee society may be taken in the case of a receiver in a probate action.—*Carpenter* v. *Solicitor to the Treasury*, 46 L.T. 821.

(v.) **C. A.**—*Reference—Form of Report—Judicature Act*, 1873, *ss.* 57, 58—*Ord.* 36, *r.* 34.—A referee, acting under sec. 57 of Judicature Act, 1873, is not bound to set out in his report the grounds on which he has arrived at his findings of facts; but the Court can, under Ord. 36, r. 34, require any explanation or reasons from the referee as to the principle upon which the findings have been arrived at.—*Miller* v. *Pilling*, 51 L.J. Q.B. 481.

(vi.) **Ch. Div. C. J.**—*Sale by order of Court—Incumbrances—Form of Order—Conveyancing Act*, 1881, *s.* 5.—On a sale by order of Court under sec. 5 of Conveyancing Act, 1881, of land free from incumbrances, the incumbrancer not being a party to the action, the order should, after directing payment into Court and setting apart a sufficient sum to meet the incumbrance, declare that any person interested should be at liberty to apply in Chambers for a declaration that the land is freed from the incumbrance.—*Dickin* v. *Dickin*, 30 W.R. 887.

(vii.) **C. A.**—*Special Indorsement—Leave to Defend—Ord.* 14.—In an action by a company for unpaid calls in which they applied to sign judgment under Ord. 14, defendant swore that he had been induced to apply for the shares on the understanding that he would not incur any liability, and that he had never received any letter of allotment. A clerk of the company swore that a letter of allotment to defendant was only posted: *Held* that there was no defence to the action if the letter was posted, but as defendant desired to cross-examine on this point, leave was given him to defend on paying the amount into Court.—*Carta Para Gold Co.* v. *Fastnedge*, 30 W.R. 880.

(viii.) **Ch. Div. K. J.**—*Witness—Expenses—Auctioneer.*—An auctioneer summoned as a witness is entitled to receive a guinea a day for loss

of time and first class railway fare, and till a sufficient sum is tendered him, he may refuse to give evidence.—*Re Working Men's Mutual Society*, 30 W.R. 938.

Principal and Agent:—

(i.) **Q. B. Div.**—*Commission Agent—Goods Consigned not of Description Ordered—Measure of Damages.*—Where a merchant in England employs another merchant residing abroad to purchase goods of a particular quality for him, and the latter purchases by mistake goods of an inferior quality to that required, the true measure of damages for which he is liable is the loss actually sustained by the principal, and not the difference between the value of the goods purchased and those ordered.—*Cassaboglou* v. *Gibbs*, L.R. 9 Q.B.D. 220; 47 L.T. 98.

(ii.) **C. A.**—*Undisclosed Principal—Privity of Contract—Set-off—Spanish Law.*—D., in Havannah, acted as shipping agent for H. in Havannah, and by H.'s direction consigned a cargo of goods to G. in London. By D.'s directions, G., knowing that D. acted for an undisclosed principal, insured the cargo in London. The ship having been lost and D. having become bankrupt, the insurance moneys were paid to G., who claimed the right to set-off moneys due to him from D.: *Held* that H. could recover the insurance moneys from G., and that the relation subsisting between D. G. and H. was not affected by the law of Spain.—*Maspons y Hernano* v. *Mildred and Co.*, 30 W.R. 862.

Public Health:—

(iii.) **Q. B. Div.**—*Paving Expenses—New Street—Premises Adjoining—38 & 39 Vict., c. 55, s. 150.*—The backs of three houses abutted upon a footpath at the end of a street, but there was no means of access from the houses to the street, and the ground at the back of the houses was five feet above the level of the street: *Held* that the houses adjoined or abutted on the street within sec. 150 of Public Health Act.—*Newport Sanitary Authority* v. *Graham*, L.R. 9 Q.B.D. 183; 47 L.T. 98.

(iv.) **Q. B. Div.**—*Paving Rate—Notice of Demand—Appeal—Time—38 & 39 Vict., c. 55, ss. 150, 268.*—On 4th May, 1881, a local board gave notice under sec. 150 of Public Health Act, 1875, to T., the owner of adjoining premises, to pave a street; and on T.'s default the Board did the work themselves. On 19th September an apportionment was made by the Board's surveyor, and notice served on T. of the amount of his share, and that the apportionment would be binding if not disputed within three months. On 20th December notice of demand was made on T. for the payment of his share, and on 10th January, 1882, T. entered an appeal under sec. 268 of the Act, by sending a memorial to the Local Government Board, complaining that part of the work done was not required, and that the cost was excessive: *Held* that the appeal was in time, and that prohibition against the hearing of the appeal by the Local Government Board on the ground that they might take into consideration matters which did not properly arise before them, would not lie.—*Regina* v. *Local Government Board & Taylor*, 51 L.J. M.C. 121.

Railway:—

(v.) **C. A.**—*Passenger Tolls—Scale of Charges—8 Vict., c. 20, s. 94, 95.*—*Held* that defendant company was not prevented by sec. 95 of Railways Clauses Act, 1845, from demanding tolls for conveying passengers in the company's carriages over a part of the line where mile-stones were not maintained; that the provisions of a private Act, that the limit of the charge for third-class passengers should be one penny per mile, repealed the provisions of a former private Act enabling the company to charge a higher rate over a portion of the line.—*Brown* v. *G. W. Rail. Co.*, 51 L.J. Q.B. 529.

Ship:—

(i.) **C. A.**—*Collision—Compulsory Pilotage—Suez Canal Regulations.*—The employment of a pilot in the Suez Canal, though compulsory, is not of such a nature as to exempt owners of a ship from liability for damage done to another ship by the negligence of such pilot.—*The Guy Mannering*, L.R. 7 P.D. 132; 46 L.T. 905; 30 W.R. 835.

(ii.) **C. A.**—*Collision—Fog—Moderate Speed.*—The question what is a moderate speed for a sailing vessel in a fog in accordance with Art. 13 of Regulations for Preventing Collisions at Sea, 1879, depends on the place where the ship happens to be, and is not necessarily proportioned to, or less than her maximum speed.—*The Elysia*, 46 L.T. 840.

(iii.) **C. A.**—*Collision with sunk Vessel—Liability of Owners of Wreck.*—Where a vessel, through the negligence of those in charge of her becomes a wreck and a dangerous obstruction in a navigable river, and the owners have duly informed the harbour-master, who has undertaken to light the wreck, the owners will not be liable for damage done to another vessel by coming in contact with the wreck.—*The Douglas*, L.R. 7 P.D. 151.

(iv.) **C. A.**—*Detention by Board of Trade—Reasonable cause for—39 & 40 Vict., c. 80, ss. 6, 10.*—The Board of Trade, in consequence of the reports of their surveyors, ordered the British ship *L.* to be provisionally detained, and a Court of Survey was held as to her condition, which reported that she was not unsafe, and ought not to have been detained. In an action by the owner of the ship against the Secretary of the Board for compensation for provisional detention: *Held* that the proper question to be left to the jury was whether the facts with regard to the *L.*, which would have been apparent to a person of ordinary skill on examining her, would have given him a reasonable cause to suspect her safety, and detain her; and not whether it was reasonable for the Board to detain her in consequence of the reports of the surveyors actually furnished.—*Thompson* v. *Farrer*, L.R. 9 Q.B.D. 372; 51 L.J. Q.B. 534; 47 L.T. 117.

(v.) **C. A.**—*Insurance—Barratry—Warranty against Capture and Seizure.*—When in a marine insurance, the risks insured against include barratry of master or crew, and there is a warranty against capture and seizure; and, owing to a barratrous act of the master, the ship is seized by revenue officers, the insurance moneys are not recoverable.—*Cory* v. *Burr*, L.R. 9 Q.B.D. 463; 51 L.J. Q.B. 468; 30 W.R. 818.

(vi.) **C. A.**—*Insurance—Partial Loss—Estimation of.*—An insured ship having been injured by running aground, the owners determined not to repair her, but sold her and claimed for a partial loss: *Held* that the proper measure of the assured's loss, was the depreciation in the value of the ship caused by the injury, and not what it would have cost to repair her. —*Pitman* v. *Universal Marine Insurance Co.*, L.R. 9 Q.B.D. 192; 46 L.T. 863; 30 W.R. 906.

(vii.) **H. L.**—*Insurance—Valued Policy—Compensation for Excess Value.*—The valuation in a valued policy is conclusive between the parties for the purpose of the contract itself, and the rights arising from it only. Compensation paid to the assured *aliunde* in respect of loss not covered by the policy, cannot be recovered by an underwriter who has paid as for a total loss.—*Burnand* v. *Rodocanachi*, 51 L.J. Q.B. 548.

(viii.) **C. A.**—*Salvage—Jurisdiction of Justices—Merchant Shipping Act*, 1854, *ss.* 458, 460.—A mud hopper barge used for carrying mud out from a river, and not propelled by oars, is a ship within sec. 2 of Merchant Shipping Act, 1854, and therefore justices have jurisdiction to award salvage for services rendered to her.—*The Mac*, L.R. 7 P.D. 126; 46 L.T. 907.

(i.) **P. D. A. Div.**—*Salvage—Tender—Costs.*—When a tender in a salvage suit is pronounced for, the usual practice is to condemn plaintiff in costs incurred since the date of the tender, but the Court may in its discretion make no order as to such costs.—*The Lotus*, 30 W.R. 892.

(ii.) **P. D. A. Div.**—*Shipping Casualty—Wrongful Act of Master—Appeal by Owner—17 & 18 Vict., c. 104, s. 242; 42 & 43 Vict., c. 72, s. 2.*—In an investigation before the Wreck Commissioner it was proved that the loss of a ship was due to improper ballast taken on board with the sanction of the master at an English port: *Held* that the loss was caused by the wrongful act or default of the master within sec. 242 of Merchant Shipping Act, 1854. No right of appeal is given by sec. 2 of Shipping Casualties Investigations Act, 1879, to any persons other than the masters and officers whose certificates have been suspended or cancelled.—*The Golden Sea*, 30 W.R. 842.

Solicitor :—

(iii.) **C. A.**—*Acting against former Client—Injunction.*—A solicitor who has been discharged by a client for whom he was acting in legal proceedings, is not precluded from subsequently acting for that client's antagonist in the same proceedings; but he must not disclose his former client's secrets.—*Little* v. *Kingswood Collieries Co.*, L.R. 20 Ch. D. 733.

(iv.) **C. A.**—*Execution of Fi. fa.—Authority of Creditor's Solicitor.*—A solicitor to a judgment creditor issuing a *fi. fa.* has no implied authority to direct the sheriff as to what goods he should seize, so as to render his client liable.—*Smith* v. *Keal*, 47 L.T. 142.

Trade Mark :—

(v.) **C. A.**—*Registration—Rectification of Register—Lapse of Time—38 & 39 Vict., c. 91, ss. 3, 5.*—An application under sec. 5 of Trade Marks Registration Act, 1875, by a person aggrieved for rectification of the register is not restricted by sec. 3 to a period of five years from date of registration.—*Re Palmer's Trade Mark*, 51 L.J. Ch. 673; 46 L.T. 787.

Trustee :—

(vi.) **Ch. Div. K. J.**—*Appointment of where none appointed by Will—Trustee Act, 1850*—Although the Court has no jurisdiction, under the Trustee Act, 1850, to remove an executor, it has jurisdiction to appoint trustees to discharge the duties incident to his office.—*McAlpine* v. *Moore*, 30 W.R. 839.

(vii.) **H. L.**—*Prize of War—Grant to Secretary of State on Trust for Persons Entitled.*—Her Majesty, by Royal Warrant, granted certain booty of war to the Secretary of State for India in Council, in trust for the use of the persons entitled to share in it, as declared by the Admiralty Court on a reference to it from the Crown: *Held* that an action by one of the persons entitled against the Secretary for an account and distribution of the fund could not be maintained.—*Kinloch* v. *Secretary of State for India*, 47 L.T. 133; 30 W.R. 845.

(viii.) **Q. B. Div.**—*Trustee of Term to Secure Annuity—Right to Title Deeds.*—C. by marriage settlement, charged certain property with the payment, after his death, of an annuity to his wife, and secured the same by granting the property to defendant, as trustee, for 100 years; and on execution of the settlement handed the title deeds of the property to defendant. C. died intestate: *Held* that the trustee was entitled to retain the title deeds as against the heirs-at-law.—*Corin* v. *Thomas*, 46 L.T. 916.

(i.) **Ch. Div. F. J.**—*Trustee Refusing to Transfer—Vesting Order—Trustee Act*, 1850, *s.* 23.—Where two or more trustees of property improperly refuse to transfer it, the Court has power under sec. 23 of Trustee Act, 1850, to make an order vesting the property in new trustees.—*Re Hyatt's Trusts*, 51 L.J. Ch. 742.

(ii.) **Ch Div. V. C. B.**—*Unnecessary Action by—Costs.*—A trustee and executor under a will brought an action for administration. The Court being of opinion that the action was unnecessary, dismissed it with costs against the trustee.—*Gage* v. *Rutland*, 46 L.T. 848.

Water :—

(iii.) **Q. B. Div.**—*Waterworks Company—Rate*—10 *Vict.*, *c.* 17, *s.* 18.—By a water company's special Act, which incorporated the Waterworks Clauses Act, 1847, the company were to supply water to occupiers of houses at a rate not exceeding £6 per cent. per annum upon the annual rack rent or value of the premises; and the rate was to be payable according to the annual value at which the premises were assessed to the poor rate; or, if not assessed, according to the nett annual value: *Held* that the water rate must be calculated on the rateable value and not on the gross estimated rental.—*Warrington Waterworks Co.* v. *Longshaw*, L.R. 9 Q.B.D. 145; 51 L.J. Q.B 498; 46 L.T. 815.

(iv.) **Q. B. Div.**—*Waterworks Company—Rate.*—A water company were, by their special Acts, required to supply water to houses at a certain rate per cent. per annum on the annual value of the houses, and it was provided that the water rate should be payable according to the actual rent of the premises where the same could be ascertained, and in other cases according to the actual amount or annual value upon which the poor-rate assessment was calculated. In a case where there was no actual rent paid: *Held* that the water-rate must be calculated on the rateable value of the premises supplied with water, as appearing from the poor-rate assessment.—*Dobbs* v. *Grand Junction Waterworks Co.*, L.R. 9 Q.B.D. 151; 51 L.J. Q.B. 501; 46 L.T. 817.

Will :—

(v.) **Ch. Div. V. C. B.**—*Charity—Mortmain—Bequest to erect Almshouses*—9 *Geo. II.*, *c.* 36.—Bequest of £1,000 to a company upon trust, when a proper site could be obtained, to erect and build almshouses, with a hope that some other persons would endow the said almshouses: *Held* not void under the Mortmain Act.—*Re White's Trusts*, 30 W.R. 837.

(vi.) **Ch. Div. V. C. H.**—*Construction—Annuity without any Deduction—Income Tax.*—Gift of an annuity to testator's wife, and a declaration that no deduction should be made from any legacies for the legacy tax or any other matter, cause or thing: *Held* that the widow was entitled to have the income tax on her annuity paid out of the testator's estate.—*Peareth* v. *Marriott*, 46 L.T. 800; 30 W.R. 884.

(vii.) **Ch. Div. C. J.**—*Construction—Conditional Limitation—Repugnancy.*—Devise of real estate to the use of A., her heirs and assigns, subject to the proviso thereinafter contained for determining her estate and interest in the event thereinafter mentioned, with other similar devises in favour of other objects. Proviso that in case any of the objects of the devises should become bankrupt, the devise unto such object should be void: *Held* that the proviso was a condition repugnant to the gift and void.—*Re Machu*, 30 W.R. 887.

(viii.) **H. L.**—*Construction—Conversion.*—The mere fact that a testator has given personalty with limitations appropriate only to realty will not be sufficient to raise an implied trust for conversion into realty.—*Evans* v. *Ball*, 30 W.R. 899.

(i.) **C. A.**—*Construction—Devise to Creditor on Condition of Relinquishing Debt—Death of Devisee—Lapse of Residue.*—Testator devised land at M. to R. on condition that he should relinquish a debt owing to him from testator; and he devised land at S. to trustees to sell, with power to postpone the sale, the unsold portion to be transmissible as personalty. He bequeathed his personalty upon trust to pay debts, except mortgage debts and the debt due to R., and in case of insufficiency the deficiency was to be paid out of the realty directed to be sold. R. died in testator's lifetime, without issue: *Held* that the M. estate must bear the debt owing to R. The trusts of one-half the proceeds of sale of the S. estate failed: *Held* that the half of the S. estate passed to the testator's heir-at-law.—*Kirk* v. *Kirk*, 47 L.T. 36.

(ii.) **C. A.**—*Construction—Forfeiture on Alienation—Acceleration of Remainder.*—Testator gave property to his son for life, to be conveyed to the son's children on his death in equal shares as they attained twenty-one, and he directed that his son's life interest should cease on alienation or bankruptcy and the gift to the children should be accelerated: *Held* that an assignment of the son's life interest and other property, which as to the life interest was never acted upon and subsequently disclaimed, worked a forfeiture, but that the gift to the children was not thereby accelerated.—*Hurst* v. *Hurst*, 51 L.J. Ch. 729; 46 L.T. 899.

(iii.) **Ch. Div. V. C. B.**—*Construction—Gift to Class—From S. Downwards.*—A gift to the children of A. "from S. downwards:" *Held* to include S.—*Lett* v. *Osborne*, 47 L.T. 40.

(iv.) **C. A.**—*Construction—Gift to Issue and their Heirs—Life Estate.*—Testator devised realty to his son, and after his decease to his lawful issue and their heirs for ever, if any, and if he should die without having any children born in wedlock then to E. and his heirs: *Held* that the son took an estate for life only.—*Morgan* v. *Thomas*, 51 L.J. Q.B. 556.

(v.) **Ch. Div. V. C. B.**—*Construction—Gift to Married Woman—Restraint on Anticipation—Non-Income Producing Fund—Annuity—Leaseholds Free of Outgoings.*—Testator bequeathed £20,000 to S., and if S. should die in his lifetime to S.'s children equally, and declared that every bequest to a female during her coverture should be for her separate use, and without power of anticipation. He directed his trustee to set apart and invest a sufficient part of his estate to pay an annuity of £500 to W.; and he bequeathed to W. a leasehold house, to be free of all outgoings and payments in respect of annual or other rent. S. died in testator's lifetime, leaving two children, one a married woman: *Held* that the married woman was entitled to have her share of the £20,000 paid over to her, that the outgoings of the leasehold house up to testator's death only were payable out of his estate, and that the annuity was for W.'s life only.—*Arnold* v. *Kayess*, 51 L.J. Ch. 721; 46 L.T. 805; 30 W.R. 883.

(vi.) **Ch. Div. F. J.**—*Construction—Inconsistent Gifts—Erroneous Recital in Codicil.*—Testator gave his daughter an estate tail in his real property, and an absolute interest in his personalty; and by his codicil, after reciting that by his will he had given her a life interest in his property with remainder to her issue, he proceeded to make further dispositions of the property inconsistent with the gift to the daughter in the will, but consistent with a gift to her of a life estate: *Held* that the gift in the will, though not revoked by the erroneous recital, was cut down by the inconsistent gifts in the codicil to a life estate.—*Haggard* v. *Haggard*, 46 L.T. 807; 30 W.R. 920.

(vii.) **Ch. Div. V. C. B.**—*Construction—Invalid Trust—Intestacy.*—Testatrix devised her dwelling-house to trustees on trust, to keep it

blocked up for twenty years, and after that term to certain persons beneficially: *Held* that the directions as to blocking up the house must be treated as ineffectual, and that there was an intestacy as to the term of twenty years.—*Brown* v. *Burdett*, 47 L.T. 94.

(i.) **Ch. Div. F. J.**—*Construction—Substituted Gift—Failure of Prior Gift.*—Testator left his residuary estate on trust for his wife for life, provided she should survive him twelve months, and gave her power to leave half the property by her will at her death, and gave the other half after her death, to his sister; and in case of his wife dying within twelve months of his decease, and in case of her not making a legal will left the whole of his estate to his sister. Testator's wife died in his lifetime: *Held* that the gift over to the sister took effect.—*Davies* v. *Davies*, 47 L.T. 40; 30 W.R. 918.

(ii.) **Ch. Div. V. C. B.**—*Construction—Substituted Gift.*—Testator gave his residue to his sister for life, and after her decease to her children on their respectively attaining twenty-one, in equal shares; and if any of them should die leaving issue, the shares of those so dying should go to their respective issue *per stirpes;* and if any of the children of his sister should die under age without leaving issue, their shares should lapse: *Held* that the gift to issue of deceased children was conditional, and therefore the issue of a child dead at date of will did not take.—*Asquith* v. *Saville*, 47 L.T. 38.

(iii.) **Ch. Div. K. J.**—*Construction—Vesting—Contingent Remainder—Trust Estate—Direction to Pay Debts.*—Testator, after directing that his debts should be paid, devised real estate to his executors and trustees on trust to pay his daughter the rents during her life and after her decease upon trust for and the testator gave and devised the said real estate to all the children of his daughter who should attain twenty-one, equally, with a gift over in default of any child attaining twenty-one. At the time of the daughter's death none of her children had attained twenty-one: *Held* that the direction to pay debts was sufficient to show the testator's intention to give his trustees an estate in fee simple, and therefore the contingent remainders to the daughter's children did not fail.—*Marshall* v. *Gingell*, 47 L.T. 159.

(iv.) **Ch. Div. K. J.**—*Construction—Vesting—Gift to Class—Death with Contingency.*—Testatrix gave realty upon trust for three daughters for life in equal shares, and directed that after the decease of each of them her share of the income should be applied for the benefit of her children living at her death, until they should attain twenty-one, "then they would be entitled to their mother's portion;" with cross-limitations over in default of children attaining twenty-one: *Held* that a child of one of the daughters, who attained twenty-one and pre-deceased his mother, took a vested interest.—*Nottage* v. *Buxton*, 47 L.T. 161.

Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times Reports, and Weekly Reporter,

FOR NOVEMBER, AND DECEMBER, 1882, AND JANUARY, 1883.*

By HENRY M. KEARY, of Lincoln's Inn, Barrister-at-Law.

Administration :—

(i.) **Ch. Div. V. C. H.**—*Administration by Court—Legacy for Life—Residuary Legatee.*—A legacy was given for the separate use of the legatee, to be invested by trustees to be named by her, and after her death to fall into the residue: *Held* that the residuary legatee had no right to have the fund brought into Court, in the absence of reasonable ground for the application.—*Braithwaite* v. *Wallis*, L.R. 21 Ch. D. 121; 52 L.J. Ch. 15; 31 W.R. 180.

(ii.) **C. A.**—*Charge—Contribution*—17 & 18 *Vict.*, c. 113. Testator held shares in a banking company whose deed of settlement provided that if any shareholder did not on demand pay all moneys due to the company, the directors might declare his share forfeited, and that nevertheless he should still be liable to pay the debt. Testator borrowed money from the company and deposited deeds of real estate as security. He devised the real estate to A., who claimed that the testator's shares on the bank should contribute rateably to the payment of the debt: *Held* that no case for contribution arose.—*Dunlop* v. *Dunlop*, L.R. 21 Ch. D. 583; 31 W.R. 211.

Agreements and Contracts :—

(iii.) **C. A.**—*Breach—Liquidated Damages—Penalty.*—A contract for sale of land by plaintiff to defendant for £70,000 provided that defendant should provide £70,000 for the purpose of laying out the estate and building thereon; and that he should deposit £5,000 in a bank in joint names of plaintiff and defendant, such £5,000 to be forfeited as liquidated damages if defendant should commit a substantial breach of the contract: *Held* that the forfeiture was intended only to take place on a substantial breach of any of the subsequent stipulations, and that the £5,000 must be regarded as liquidated damages.—*Wallis* v. *Smith*, L.R. 21 Ch. D. 243; 47 L.T. 389; 31 W.R. 214.

* Cases reported only in the *Law Times Reports* and *Weekly Reporter* for January 27th are postponed to the next quarter's Digest.

(i.) **Q. B. Div.**—*Breach—Liquidated Damages—Penalty.*—Covenant by lessee of mines at the expiration of lease to put lands in state they were before, or to pay £100 for every acre not so restored: *Held* that lessor was entitled to £100 for every acre not restored, though the sum greatly exceeded the actual amount of the damage.—*Re Earl of Mexborough and Wood*, 47 L.T. 516.

(ii.) **Ch. Div. M. R.**—*Restrictive Covenant—Breach—Acquiescence.*—*Held* that the right to enforce a covenant by purchasers of part of an estate not to keep a beer-shop, was lost by a long acquiescence in breaches of the covenant.—*Kelsey* v. *Dodd*, 52 L.J. Ch. 34.

(iii.) **Ch. Div. V. C. B.**—*Restrictive Covenant—Building Estate—Right to Enforce.*—Purchasers of lots in a building estate entered into certain covenants as to the number and position of the houses to be built thereon. Defendant bought lots adjoining a lot bought by plaintiff and was about to build houses not complying with the covenants, and in consequence overlooking plaintiff's plot more than if they did comply: *Held* that plaintiff was entitled to restrain defendant from breaking the covenants, notwithstanding that breaches had been permitted on other plots not contiguous to plaintiff's.—*Jackson* v. *Winnifrith*, 47 L.T. 243.

(iv.) **Q. B. Div.**—*Restrictive Covenant—Mandatory Injunction—Laches—Indemnity of Lessee.*—Plaintiffs conveyed to A. lands adjoining their railway, and A. covenanted for himself, his heirs, executors, administrators and assigns, that he would not build within ten feet of a certain viaduct: *Held* that the covenant was binding on a purchaser from A.; that plaintiffs were entitled to an injunction against such purchaser and his lessee to compel them to remove buildings erected in breach of the covenant, notwithstanding that a breach was also committed in 1869; and that the lessee was not entitled to be indemnified by his lessor, though the latter had given him leave to erect the building sought to be removed.—*London, Chatham and Dover Rail. Co.* v. *Bull*, 47 L.T. 413.

(v.) **C. A.**—*Sale of Goods—Monthly Delivery—Non-payment by Vendee—Repudiation.*—Mere non-payment by the vendee for goods delivered under a contract is not, in itself, sufficient to justify the vendor in treating the contract as at an end, and refusing to deliver goods thereunder.—*Mersey Steel and Iron Co.* v. *Naylor*, L.R. 9 Q.B.D. 648; 51 L.J. Q.B. 576; 47 L.T. 369; 31 W.R. 80.

(vi.) **Q. B. Div.**—*Sale of Goods—Time limited for Rejection.*—Where the vendor of goods has stipulated that no allowance shall be made for imperfections unless notice be given by first post after receipt of goods, this stipulation applies to all defects, whether latent or patent.—*Gorton* v. *Macintosh*, 31 W.R. 232.

(vii.) **Ch. Div. K. J.**—*Specific Performance—Damages—21 & 22 Vict., c. 27.*—To entitle a plaintiff in an action for specific performances to recover damages, other than his actual loss and expenses, in respect of a breach of contract, misrepresentation by defendant must be pleaded and established.—*Rock Portland Cement Co.* v. *Wilson*, 31 W.R. 193.

Arbitration :—

(viii.) **Q. B. Div.**—*Injunction to Restrain.*—The Court will grant an injunction to restrain an arbitration if it appears that the question in dispute is not a question or difference within the meaning of the agreement under which the arbitration is insisted upon.—*North London Rail. Co.* v. *Great Northern Rail. Co.*, 47 L.T. 383.

Bankruptcy:—

(i.) **C. A.**—*Act of Bankruptcy—Trader—Discontinuance of Trade—Bankruptcy Act*, 1869, *ss.* 6, 8.—If a debtor is not actually carrying on a trade at the time when he is alleged by a petitioning creditor to have committed an act of bankruptcy, it is a question of intention to be decided on the evidence, whether the debtor has permanently ceased to trade or not; and if he has only temporarily suspended trading he is still a trader within the Bankruptcy Act.—*Ex parte Salaman, Re Taylor*, L.R. 21 Ch. D. 394; 47 L.T. 495.

(ii.) **C. J. B.**—*Adjudication—Power to Annul—Bankruptcy Act*, 1869, *s.* 10.—An adjudication in bankruptcy not appealed from and duly advertised, will not be afterwards annulled on the ground that there was no sufficient petitioning creditor's debt.—*Ex parte French, Re Trim*, 52 L.J Ch. 48; 47 L.T. 339.

(iii.) **C. A.**—*Bankruptcy of Assignee of Lease—Disclaimer—Bankruptcy Act*, 1869, *s.* 23.—The disclaimer of a lease by the trustee of a bankrupt assignee has no effect upon the rights and liabilities between the lessor and original lessee, and the former can recover from the latter rent accrued due since the date of disclaimer.—*East and West India Dock Co.* v. *Hill*, L.R. 22 Ch. D. 14; 52 L.J. Ch. 44; 47 L.T. 270; 31 W.R. 55.

(iv.) **C. J. B.**—*Composition—Small Assets—Registration.*—A debtor filed a liquidation petition and all the creditors except one agreed to accept a composition of 3d. in the pound payable in two months, and secured. The debts amounted to £304, and the assests to £8. The resolutions were confirmed and registered: *Held* that the registration was right in the absence of evidence of *mala fides.*—*Ex parte Russell, Re Robins*, 47 L.T. 338.

(v.) **C. A.**—*Dealings with Bankrupt—Protected Transaction—Bankruptcy Act*, 1869, *s.* 94 (3).—A dealing or contract with a bankrupt made before date of adjudication by one having notice of any act of bankruptcy committed by the bankrupt and available against him at date of adjudication, is not protected by sec. 94, sub-sec. 3 of Bankruptcy Act.—*Hood* v. *Newby*, L.R. 21 Ch. D. 605; 31 W.R. 185.

(vi.) **C. A.**—*Examination of Witness—Right to Copy of Deposition—Bankruptcy Act*, 1869, *s.* 96.—The Court has a discretion whether or not to give a copy of the short-hand notes of the deposition of a witness examined under sec. 96 of Bankruptcy Act. A creditor who was so examined was allowed a copy.—*Ex parte Pratt, Re Hayman*, L.R. 21 Ch. D. 439; 47 L.T. 368; 31 W.R. 189.

(vii.) **C. A.**—*Examination of Witness—Dealings with Bankrupt—Bankruptcy Act*, 1869, *ss.* 96, 97.—The Court has no power to order a witness to furnish an account in writing of his dealings with the bankrupt.—*Ex parte Reynolds, Re Reynolds*, L.R. 21 Ch. D. 601; 47 L.T. 495; 31 W.R. 187.

(viii.) **C. A.**—*Jurisdiction—Fraudulent Deed.*—Where a trustee in bankruptcy proceedings in a county court impeaches a deed executed by the bankrupt as fraudulent under 13 Eliz., c. 5, if the amount at stake is considerable, and serious questions of character are involved, the Judge ought, if so desired, to leave the matter to be tried in an action in the High Court in the ordinary way.—*Ex parte Price, Re Roberts*, L.R. 21 Ch. D. 553; 47 L.T. 402; 31 W.R. 104.

(ix.) **C. J. B.**—*Jurisdiction—Bankruptcy Act*, 1869, *s.* 72.—The fact that a mortgage of premises to a surety by the principal to secure him against loss, contains a condition that the mortgagee shall be at liberty to enter

upon the premises on the bankruptcy of the mortgagor, does not give the Court of Bankruptcy jurisdiction to interfere, after the mortgagor has become bankrupt, with the mortgagee's rights, when he has in fact entered on the premises under another condition.—*Ex parte Hutchinson, Re Holt,* 47 L.T. 483.

(i.) **C. J. B.**—*Liquidation—Lease—Surrender by Operation of Law—Agreement for New Lease.*—A fire having occurred on leasehold premises the lessor entered, and subsequently an executory agreement for a new lease at an advanced rent was entered into, and the lessee, on the lessor's demand, had paid the advanced rent under protest. The lessee having become a liquidating debtor: *Held* that the old lease was surrendered by operation of law, and that a distress by the landlord for the increased rent was lawful.—*Ex parte Vitale, Re Young,* 47 L.T. 480.

(ii.) **C. A.**—*Liquidation—Statement of Affairs—Partnership.*—A debtor who carries on one business alone and another in partnership with a solvent partner, when he files a liquidation petition must set out in his statement of affairs the assets and liabilities of the partnership business in detail, and must state the account between himself and his partner. If he cannot make such a statement, he cannot have a liquidation by arrangement or composition.—*Ex parte Amor, Re Amor,* L.R. 21 Ch. D. 594.

(iii.) **C. A.**—*Petitioning Creditor's Debt—Contract to take Shares—Stock-Broker—Rules of Stock Exchange.*—By the rules of the Stock Exchange prices of shares contracted to be bought or sold by a defaulting member are to be fixed by the official assignee of the Stock Exchange, and the differences paid to or claimed from such assignee. A member of the Stock Exchange having contracted for the purchase of certain shares failed to meet his engagements: *Held* that the price fixed by the official assignee for such shares was substituted for the original contract, and a bankruptcy petition could be founded upon a claim for such price.—*Ex parte Ward, Re Ward,* 31 W.R. 112.

(iv.) **C. J. B.**—*Petitioning Creditor's Debt—Liquidated Sum—Act of Bankruptcy—Trader.*—A trustee was ordered by the High Court to deliver up certain property or pay the value of it to A., and an inquiry was directed to ascertain the value: *Held* that the amount due to A. under this order could not constitute a good petitioning creditor's debt till after the conclusion of the inquiry. A trader who executed an assignment of all his business and then went abroad: *Held* not a trader within the meaning of the Bankruptcy Act, after he had executed the assignment.—*Ex parte Reynolds, Re Reynolds* (2), 47 L.T. 448.

(v.) **C. A.**—*Proof—Admission—Right to apply to Expunge—Time—Bankruptcy Rules,* 1870, *rr.* 72, 73.—A trustee in bankruptcy who has admitted a proof against the estate is entitled at any time afterwards to apply to the Court to expunge the proof, on the ground that it was wrongly admitted; but, if expunged, the creditor will be entitled to retain any dividends already received.—*Ex parte Harper, Re Tait,* L.R. 21 Ch. D. 537; 47 L.T. 421; 31 W.R. 152.

(vi.) **C. A.**—*Proof—Refusal to adjourn Consideration—Appeal.*—The admission or refusal of a disputed proof at the first meeting of creditors is an exercise of judicial discretion of the registrar, and he is not bound to adjourn the consideration of the proof. An appeal will lie from the exercise of such discretion, but the Court of Appeal will not interfere except on a very strong case being shown.—*Ex parte Mark, Re Amor,* 31 W.R. 101.

(i.) **Q. B. Div.**—*Scheme of Settlement—Annulment of Adjudication—Release of Bankrupt.*—By a special resolution a bankrupt's creditors resolved that upon his assigning to his trustee all his estate and effects for the benefit of his creditors, the order of adjudication should be annulled: *Held* that he was thereby discharged from all debts in respect of which he was made bankrupt.—*Gilbey* v. *Jeffries*, 47 L.T. 473.

(ii.) **Q. B. Div.**—*Set-off—Mutual Dealings—Landlord and Tenant—Rent Due before Bankruptcy—Bankruptcy Act*, 1869, *s.* 39.—The trustee of a bankrupt lessee of a farm carried on the farm till the termination of the lease. The custom of the country required the landlord, at the expiration of the lease, to pay the tenant a valuation for tillage, sowing, and cultivation: *Held* that the landlord could not set-off against the sum so due to the trustee, the rent due from the bankrupt at the time of bankruptcy.—*Alloway* v. *Steere*, L.R. 10 Q.B.D. 22; 52 L.J. Q.B. 38; 47 L.T. 333.

(iii.) **H. L.**—*Stoppage in Transitu—Sub-Purchase—Constructive Delivery.*—The re-sale by the purchaser of goods *in transitu*, the receipt of delivery orders by the sub-purchaser, and the actual receipt by him of part of the goods, do not put an end to the *transitus*, so as to prevent the vendor's right of stoppage *in transitu* attaching to the unpaid purchase-money due from the sub-purchaser.—*Kemp* v. *Falk*, L.R. 7 App. 573; 47 L.T. 454; 31 W.R. 125.

(iv.) **C. A.**—*Trustee—Direction by Creditors—Application to Court—Bankruptcy Act*, *s.* 20.—Under section 20 of the Bankruptcy Act, 1869, the Court has power to give directions to a trustee over-riding directions given him by a majority of the creditors, where these do not appear to have been given *bonâ fide* in the interests of the creditors generally.—*Ex parte Cocks, Re Poole*, L.R. 21 Ch. D. 397; 47 L.T. 496; 31 W.R. 105.

Bill of Exchange:—

(v.) **Q. B. Div.**—*Acceptance in Blank—Fraudulent Alteration—Liability.*—A bill of exchange containing the sum of £14 in the margin in figures, but no words in the body to denote the amount, was accepted by defendant and returned to the drawer, who fraudulently inserted the words "one hundred and sixty-four" in the bill, and altered the marginal figures to that amount: *Held* that defendant was liable on the bill to an innocent holder for value.—*Garrard* v. *Lewis*, L.R. 10 Q.B.D. 30; 47 L.T. 408.

Bill of Sale:—

(vi.) **Q. B. Div.**—*After-Acquired Property—Growing Crops.*—By bill of sale grantor assigned to grantee the growing crops on certain premises and those which at any time thereafter should be in or about the same or any other premises of the grantor during the continuance of the security: *Held* sufficient to pass future growing crops on their coming into existence, and to enable grantee to maintain an action at law for their recovery or for damages for conversion.—*Clements* v. *Mathews*, 47 L.T. 251.

(vii.) **Q. B. Div.**—*Attestation—Affidavit*—41 *&* 42 *Vict.*, *c.* 31, *s.* 10.—The affidavit of the attesting witness to a bill of sale need not state in so many words that he did attest the bill, if this can be inferred from the affidavit.—*Yates* v. *Ashcroft*, 47 L.T. 337; 31 W.R. 156.

(viii.) **C. A.**—*Consideration—Affidavit of Attestation*—41 *&* 42 *Vict.*, *c.* 31, *ss.* 8, 10.—The consideration for a bill of sale is set forth sufficiently to satisfy section 8 of Bills of Sale Act, 1878, if it is stated as a certain

sum in cash, though in fact such sum was never actually paid to the grantor but was retained by him out of moneys payable by him to the grantee for a contemporaneous purchase of the property comprised in the bill. It is not necessary that the affidavit filed on the registration of a bill of sale should state that the attesting solicitor explained the effect of the bill to the grantor before the execution.—*Ex parte Bolland, Re Roper*, L.R. 21 Ch. D. 543; 47 L.T. 488; 31 W.R. 102.

(i.) **C. A.**—*Consideration—Agreement not to Register—Additional Bonus—Misdescription of Grantor*—41 & 42 *Vict.*, c. 31, *ss.* 8, 10.—At the time of granting a bill of sale it was verbally agreed that the bill should not be registered, in consequence of which a higher bonus was payable by the grantors: *Held* that the agreement not to register was collateral, and need not be stated in the bill, and that it was not a defeasance or condition within section 10 of Bills of Sale Act, 1878. The grantors, a father and son, were described as partners. They had been partners, but at the date of execution the partnership was dissolved. The father afterwards became bankrupt: *Held* no such misdescription as to affect the validity of the registration.—*Ex parte Popplewell, Re Storey*, L.R. 21 Ch. D. 73; 52 L.J. Ch. 39; 47 L.T. 274; 31 W.R. 35.

(ii.) **C. A.**—*Re-Registration—Affidavit—Description of Grantee*—41 & 42 *Vict.*, c. 31, *s.* 11.—When a bill of sale is re-registered, the affidavit must set forth the names and addresses of the parties as stated in the bill, though such description may be erroneous.—*Ex parte Webster, Re Morris*, 31 W.R. 111.

Building Society:—

(iii.) **C. A.**—*Borrowing Powers—Over-drawing Account—Bankers Lien.*—A building society, having no power to borrow, overdrew its account, and deposited deeds with its bankers as security for the over-draft: *Held*, on the winding-up of the society, that the over-drawing was *ultra vires*, but the bankers were entitled to hold the deeds as a security for so much of the money advanced as had been applied in payment of the liabilities of the society properly payable.—*Blackburn Building Society* v. *Cunliffe Brooks & Co.*, L.R. 22 Ch. D. 61; 31 W.R. 98.

Charity:—

(iv.) **P. C.**—*Charitable Gift—Appropriation to Educational Purposes—Endowed Schools Act*, 1869, *ss.* 5, 14, 19.—Endowments given for charitable uses and appropriated to purposes of education by a scheme and order of the Court of Chancery are educational endowments within sec. 5 of Endowed Schools Act. When such endowment was actually given more than 50 years before the Act, but appropriated under the scheme within 50 years: *Held* that it was not within sec. 14, sub-sec. 1. A scheme providing that educational fees of a particular class should be increased: *Held* not contrary to sec. 11 of the Act, or sec. 5 of the Amendment Act of 1873.—*Ross* v. *Charity Commissioners*, L.R. 7 App. 463; 51 L.J. P.C. 106; 47 L.T. 172.

Colonial Law:—

(v.) **P. C.**—*Law of Canada—Debentures issued by Trustees of Quebec Turnpike Roads.*—*Held*, that debentures issued under the authority of Canadian Act, 16 Vict., c. 235, by the trustees of the Quebec turnpike roads, appointed under Ordinance 4 Vict., c. 17, did not create a liability on the part of the province in respect of either principal or interest thereof; and that the province of Canada had not recognised its liability to pay the same.—*Regina* v. *Belleau*, L.R. 7 App. 473.

Company:—

(i.) **C. A.**—*Memorandum—Adding to by Articles—Dividends out of Capital—Companies Act,* 1862, *s.* 12.—The nominal capital of a company formed for land and financial business was stated by the memorandum of association to be divided into A shares and B shares. The articles of association provided that the capital and income of the B shares were to be formed into a trust fund for paying a preferential dividend on the A shares: *Held* that the articles were *ultrà vires.*—*Guinness* v. *Land Corporation of Ireland,* 47 L.T. 517.

(ii.) **C. A.**—*Voting—Proxies—Attestation.*—A company's articles provided that proxies must be in writing, and the shareholder's signature attested by a witness, and provided a form of proxy containing an attestation clause. By subsequent special resolution, a new form of proxy was adopted which contained no attestation clause: *Held* that votes given on the new forms were invalid.—*Harben* v. *Phillips,* 31 W.R. 173.

(iii.) **C. A.**—*Winding-up—Action by Liquidator for Debt—Set-off—Judicature Act,* 1875, *s.* 10; *Ord.* 19, *r.* 3.—In an action by the liquidator of a company which is being wound-up for a debt due to the company, defendant may set-off unliquidated damages, by counter-claim, to an amount not exceeding the claim of the liquidator.—*Mersey Steel & Iron Co.* v. *Naylor,* L.R. 9 Q.B.D. 648; 51 L.J. Q.B. 576; 47 L.T. 369; 31 W.R. 80.

(iv.) **Ch. Div. K. J.**—*Winding-up—Contributory—Damages for Misfeasance—Set-off—Ord.* 19, *r.* 3.—A summons was taken out, in the winding-up of a company, against H. for damages for misfeasance, and an order made thereon for payment by him of £2,000. After the summons, and before the order, H. assigned certain debts due from the company to him to T., who took them without notice of the claim against H.: *Held* that the liquidator could not set-off against T. the £2,000 due from H.—*Ex parte Theys, Re Milan Tramways Co.,* L.R. 22 Ch. D. 122; 52 L.J. Ch. 29; 31 W.R. 107.

(v.) **C. A.**—*Winding-up—Costs of Liquidation—Appeal—Companies Act,* 1862, *s.* 95.—A liquidator is, generally speaking, entitled to costs properly incurred, but is liable to be ordered to pay costs personally where he has been guilty of ignorance or want of skill, though there has been no actual misconduct. If he appeal from an adverse decision without leave, he will be liable for the costs of appeal if unsuccessful.—*Re Silver Valley Mining Co.,* L.R. 21 Ch. D. 381; 31 W.R. 96.

(vi.) **C. A.**—*Winding-up—Directors' Liability—Dividends out of Capital—Set-off—Statute of Limitations—Companies Act,* 1862, *s.* 165.—*Held* that directors of a company who had paid dividends out of capital were guilty of a breach of trust within sec. 165 of Companies Act, 1862, and jointly and severally liable to refund the money so paid; that the Statute of Limitations did not affect their liability; and that they were not entitled, in the winding-up of the company, to set-off debts due to them from the company.—*Flitcroft's Case, Re Exchange Banking Co.,* L.R. 21 Ch. D. 519; 31 W.R. 174.

(vii.) **C. A.**—*Winding-up—Director's Liability—Misfeasance—Set-off.*—Directors of a company agreed to pay £2,600 to a promoter for his services on a verbal understanding that he should expend this sum in the purchase of the company's debentures; which he accordingly did, and divided them between himself and the directors: *Held,* in the winding-up, that the directors were liable to make good the £2,600, and that there was no right of set-off in respect of the sums so payable by the directors against debts due to them from the company.—*Ex parte Pelly, The Anglo-French Co-operative Society,* L.R. 21 Ch. D. 492; 31 W.R. 177.

(i.) **Ch. Div. F. J.**—*Winding-up—Director's Liability—Non-feasance.*—Section 165 of Companies Act, 1862, does not apply to non-feasance by directors.—*Re Wedgwood Coal and Iron Co.*, 31 W.R. 181.

(ii.) **C. A.** — *Winding-up — Execution — Companies Act*, 1862, *s.* 163.—Where an execution against the goods of a company which is being wound-up is avoided under section 163 of Companies Act, 1862, it is avoided altogether, and the creditor retains no interest under it.—*Ex parte Fourdrinier, Re Artistic Colour Printing Co.*, L.R. 21 Ch. D. 510; 31 W.R. 149.

(iii.) **Ch. Div. C. J.**—*Winding-up—Mortgage of Companies Effects—Books of Company.*—In the winding-up of a company a mortgagee in possession under a mortgage of all the company's effects, cannot retain the books of the company, as against the official liquidator.—*Re Clyne Tin Plate Co.*, 47 L.T. 439.

(iv.) **Ch. Div. V. C. B.**—*Winding-up—Two Petitions.*—Where it is clear that a company cannot continue to carry on business, a winding-up order will be made upon petition, though a prior petition in another branch of the Court, and a motion for transfer under Ord. 51 are pending, if the second petition has been presented *bonâ fide*, without knowledge of the first.—*Re Wynaad Gorddu Lead Mining Co.*, 31 W.R. 226.

Copyright :—

(v.) **Ch. Div. V. C. B.**—*Infringement—Book—5 & 6 Vict., c.* 45.—Plaintiff registered as a book an envelope containing a card perforated so as to cast a shadow resembling a well-known picture. The title and description of the article were printed on the envelope : *Held*, that the only thing registered was the matter printed on the envelope.—*Cable* v. *Marks*, 47 L.T. 432; 31 W.R. 227.

(vi.) **C. A.**—*Infringement—Illustrated Catalogue—5 & 6 Vict., c.* 45, *s.* 2.—An illustrated catalogue of furniture is a book within sec. 2 of Copyright Act, 1842, and protected from infringement under the Act.—*Maple and Co.* v. *Junior Army and Navy Stores*, L.R. 21 Ch. D. 369; 31 W.R. 70.

Coroner, Duties of :—

(vii.) **Q. B. Div.**—*Refusal to Hold Inquest—Delay.*—A coroner received from the police authorities notice that a man within his district, aged sixty-one, had been found dead in his bed. It did not appear either that there had been any previous illness, or that there was any suspicion of suicide or crime, and a medical officer refused to give a certificate : *Held*, that the coroner was bound to hold an inquest. A coroner is not justified in delaying the inquest on a body in a state of decomposition for five days in order that the body may be identified.—*Re Hull*, L.R. 9 Q.B.D. 689.

County Court :—

(viii.) **Q. B. Div.**—*Case sent for Trial to—Unliquidated Damages—19 & 20 Vict., c.* 108, *s.* 26.—There is no power to order an action for unliquidated damages to be tried in a County Court, though the writ be endorsed with a claim for a specified sum.—*Knight* v. *Abbott*, L.R. 10 Q.B.D. 11.

(ix.) **Q. B. Div.**—*Private Act—Reference to County Court Judge—Mandamus.*—By a private Act it was provided that any dispute between the B. sewers board and any local authority with respect to carrying out the provisions of the Act, might, at the instance of either party, be referrred to the Judge of the Sussex County Court who should hear and determine such dispute, and whose decision should be final. A

dispute having arisen between the board and a local authority, the board required it to be referred to the County Court Judge: *Held* that he was bound to hear and determine the matter, and that *mandamus* was the proper course to compel him to do so.—*Re Brighton Sewers Act*, L.R. 9 Q.B.D. 723.

Crimes and Offences:—

(i.) **C. C. R.**—*Admiralty Jurisdiction—Felony.*—The Admiralty jurisdiction of England extends over British vessels when in the rivers of a foreign territory, where the tide ebbs and flows, and where great ships go.—*Regina* v. *Carr*, 52 L.J. M.C. 12; 47 L.T. 450; 31 W.R. 121.

(ii.) **Q. B. Div.**—*Elementary Education—Attendance Order—Death of Father—39 & 40 Vict., c. 79, ss. 11, 12.*—An attendance order made on the father of a child under sec. 11 of Elementary Education Act, 1876, cannot, on the father's death, be enforced against the mother under sec. 12.—*Hance* v. *Fairhurst*, 51 L.J. M.C. 139.

(iii.) **C. A.**—*Extradition—Person already in Custody—Arrest without Warrant—33 & 34 Vict., c. 52, s. 8.*—Under sec. 8 of Extradition Act, 1870, a fugitive criminal who is already in custody may be detained for an offence coming within the Act, though originally arrested without warrant.—*Regina* v. *Weil*, L.R. 9 Q.B.D. 701; 31 W.R. 61.

(iv.) **P. C.**—*False Imprisonment—Lunatic—Public Duty.*—An officer in India in command of military cantonments, and having general control of the police in the absence of the cantonment magistrate, believing appellant to be a dangerous lunatic, directed two medical officers to examine him, and placed a guard over him till they could decide the case. The medical officers reported appellant to be sane: *Held* that the officer was liable for damages at the suit of appellant.—*Sinclair* v. *Broughton*, 47 L.T. 170.

(v.) **Q. B. Div.**—*Gaming—Open and Public Place—Railway Carriage—36 & 37 Vict., c. 38, s. 3.*—A railway carriage while travelling on its journey is an open and public place to which the public have or are permitted to have access within sec. 3 of Vagrant Act Amendment Act, 1873.—*Langrish* v. *Archer*, L.R. 10 Q.B.D. 44; 47 L.T. 548; 31 W.R. 183.

(vi.) **Q. B. Div.**—*Indictment—Adding Counts—30 & 31 Vict., c. 35, s. 1.*—On an application for a consent under sec 1 of 30 & 31 Vict., c. 35, to add counts to a bill of indictment, materials ought to be placed before the Judge in order to enable him to exercise his discretion as to giving his consent; and where such consent has not been properly given, the Court has jurisdiction to quash the counts added under it.—*Regina* v. *Bradlaugh*, 47 L.T. 477; 31 W R. 229.

(vii.) **C. C. R.**—*Rape—Child Between Twelve and Thirteen—38 & 39 Vict., c. 94, s. 4.*—Section 4 of 38 & 39 Vict., c. 94 does not repeal the common law which makes the offence of rape a felony.—*Regina* v. *Ratcliffe*, 47 L.T. 388.

Debtor and Creditor:—

(viii.) **Q. B. Div.**—*Choice of Debtors—Election—Estoppel.*—Any act of a creditor, having the right to elect which of two debtors he will proceed against, by which he materially affects the position of the other creditors of one of the debtors, will be held to amount to an election on his part.—*Fell* v. *Parkin*, 47 L.T. 350.

(ix.) **Q. B. Div.**—*Release—Inspectorship Deed—Estoppel.*—A deed of inspectorship and composition contained a covenant that in a certain event the debtor would, if required, assign all his property to the inspector for the benefit of his creditors, and that thereupon the debtor

should be released from his debts. There was also a proviso that the deed should be void if all the creditors to a certain amount did not execute it within six months. The debtor made the assignment to the inspector: *Held* that the deed was voidable only, and not void if not executed by all the necessary creditors, and that the release was a good defence against a creditor who had executed the deed and endeavoured to obtain payment of a dividend under it, and who knew that all the creditors had not executed it.—*Dunn* v. *Wyman*, 51 L.J. Q.B. 623.

Defamation :—

(i.) **H. L.**—*Libel—Inuendo—Question for Jury.*—Where words taken in their primary sense are not libellous, in order to prove a libel depending on an inuendo there must be evidence of facts which would reasonably make them defamatory in their secondary sense, known both to the person who indicted the libel and to those to whom it was published.—*Capital and Counties Bank* v. *Henty*, L.R. 7 App. 741; 31 W.R. 157.

Easement :—

(ii.) **Ch. Div. V. C. B.**—*Light—Implied Grant—Derogating from.*—J. erected buildings consisting of seven blocks on certain land, and mortgaged one block to R. and subsequently another to M. At the date of the mortgages the blocks were unfinished, and when they were completed some of the rooms in R's block derived their light through windows in the party wall separating this block from M.'s. R. and M. afterwards foreclosed: *Held* that M. must be restrained from interfering with the easement of light to R.'s block through the windows in the party wall.—*Russell* v. *Watts*, 47 L.T. 245.

(iii.) **C. A.**—*Right to support—Implied—Grant.*—The corporation of L. sold to plaintiff one of several lots of land which were offered for sale on conditions requiring the purchasers to build thereon according to plans approved by the corporation. Plaintiff began to build a house on his lot, and subsequently defendant bought an adjoining lot, and began to excavate for foundations to a greater depth than plaintiff had done, and thereby endangered plaintiff's foundations: *Held* that he must be restrained from doing so.—*Rigby* v. *Bennett*, L.R. 21 Ch. D. 559; 31 W.R. 222.

Ecclesiastical Law :—

(iv.) **Ch. Div. C. J.**—*Deprivation—Prohibition—Interlocutory Decree—Royal Palace—3 & 4 Vict., c. 86.*—A suit for ecclesiastical offences was instituted against an incumbent in 1874, and sentence pronounced of suspension on 9th March, 1878, conditional on an affidavit being filed. When the affidavit was filed, another sentence to the same effect was pronounced on 23rd March, 1878. A second suit was brought for disobedience of the order of 23rd March, 1878. On motion to make absolute a rule *nisi* for prohibition to the judge of the Arches Court, and the promoter: *Held* that the order of 23rd March, 1878, was valid, and that Committe Room E of House of Lords, where the Judge sat who pronounced sentence, was not exempt from ecclesiastical jurisdiction as being in the Palace of Westminster.—*Combe* v. *De la Bere*, 47 L.T. 185; 31 W.R. 24.

Election :—

(v.) **C. A.**—*Parliament—Election Expenses—Authority of Sub-Agent.*—Though a sub-agent at an election has an implied authority to employ canvassers, he has no authority to pay them, and therefore cannot recover the amount so expended from the candidate.—*Re Parker*, L.R. 21 Ch. D. 408; 31 W.R. 212.

Fishery:—

(i.) **H. L.**—*Prescription—Profit à prendre.*—Plaintiffs, in an action of trespass for disturbance of their several oyster fishery in a tidal navigable river, established a *primâ facie* title to the soil of the river and the fishery: *Held* that a claim by defendants to a right to fish at certain times in the river as inhabitants of ancient tenements in a borough was not a *profit à prendre in alieno solo*, and that a lawful origin to the usage ought to be presumed if reasonable.—*Goodman* v. *Mayor of Saltash*, L.R. 7 App. 633.

Highway:—

(ii.) **Q. B. Div.**—*Repair—Rate*—38 *&* 39 *Vict., c.* 55, *s.* 216.—A local district board in 1880, laid down in their district a kerbstone about 300 yards long, as a coping to the pathway of a road: *Held* that this did not constitute the establishment of public works of paving within sec. 216, sub-sec. 3 of Public Health Act, 1875.—*Oxenhope District Board* v. *Bradford Corporation*, 47 L.T. 344.

(iii.) **Q. B. Div.**—*Trespass—Entry of Ox into Shop Adjoining Street—No Negligence.*—An ox belonging to defendant, while being driven by his servants through the streets of a country town, entered plaintiff's shop, which adjoined the street, through an open doorway, and damaged his goods. No negligence by defendant or his servants was proved: *Held* that he was not liable.—*Tillett* v. *Ward*, L.R. 10 Q.B.D. 17; 47 L.T. 546; 31 W.R. 197.

Husband and Wife:—

(iv.) **Q. B. Div.**—*Contract by Wife with Husband as to Realty*—3 *&* 4 *Will. IV., c.* 74, *ss.* 77, 79.—A married woman seized in fee of real estate, entered into a verbal agreement with her husband, that if he would pay certain incumbrances on the property, and provide for its management and repair, she would convey it to him and settle it upon him absolutely. The wife died without executing a conveyance to the husband: *Held* that the contract could not be set up as a defence to a claim by the heir-at-law of the wife to recover the realty.—*Williams* v. *Walker*, L.R. 9 Q.B.D. 576; 31 W.R. 120.

(v.) **P. D. A. Div.**—*Divorce—Claim for Damages by Bankrupt—Security for Costs.*—In a petition for dissolution of marriage by a husband, who was an uncertificated bankrupt, he claimed damages: *Held* that unless the claim for damages were withdrawn, he must give security for costs. —*Smith* v. *Smith*, L.R. 7 P.D. 227; 47 L.T. 355; 31 W.R. 124.

(vi.) **P. D. A. Div.**—*Divorce—Maintenance—"Dum Casta" clause.*—After decree absolute for dissolution of marriage a deed was executed by order of the Court, securing a maintenance for the wife. It did not contain a *dum casta* clause: *Held* that the Court had no power to set aside the deed by reason that the wife was no longer chaste.—*Bradley* v. *Bradley*, L.R. 7 P.D. 237; 51 L.J. P.D.A. 87; 47 L.T. 355; 31 W.R. 200.

(vii.) **Ch. Div. F. J.**—*Equity to Settlement—Decree directing Settlement—Death of Husband—Rights of Children.*—In a suit to enforce her equity to a settlement a wife obtained a decree, declaring that subject to a certain enquiry and direction, the property in question ought to be settled on her and her infant children. The husband died before the decree was carried into effect: *Held* that the wife was entitled to the property absolutely as against her children.—*Pemberton* v. *Marriott*, 47 L.T. 332.

(viii.) **Q. B. Div.**—*Husband's Liability—Debts of Deceased Wife contracted before Marriage*—37 *&* 38 *Vict., c.* 50.—An action will not lie against a husband married between July 30th, 1874, and January 1st, 1883, after the death of his wife, for debts contracted by her before marriage.—*Bell* v. *Stocker*, 31 W.R. 183.

Infant:—

(i.) **Ch. Div. K. J.**—*Infant's Real Estate—Power of Court to Mortgage.*—An infant was absolutely entitled, subject to certain trusts, to the beneficial interest in real estate vested in trustees: *Held* that the Court could direct the estate to be mortgaged to raise money to pay for necessary repairs.—*Jackson* v. *Talbot*, L.R. 21 Ch. D. 786.

(ii.) **C. A.**—*Ward of Court—Removal out of Jurisdiction—Father a Bankrupt.*—A ward of Court was apprenticed in the Government Dockyard at Devonport. His father, who was a bankrupt, was about to emigrate to Manitoba, and proposed to take the ward with him. An uncle having undertaken to provide for the ward's maintenance in England till he could earn his own living, leave to take him out of the jurisdiction was refused to the father.—*Vidler* v. *Collyer*, 47 L.T. 283.

Injunction:—

(iii.) **C. A.**—*Interlocutory Injunction—Damages.*—Plaintiff obtained an interlocutory injunction to restrain defendant from building, so as to obstruct access of light, on the usual undertaking as to damages, and this order was afterwards discharged, and the action dismissed by the Court of Appeal. Six months afterwards defendant applied for an inquiry as to damages, the only damage alleged being that he was prevented from carrying out an agreement to let part of the property, but no binding agreement to let was proved: *Held* that no inquiry as to damages ought to be granted, and that even if a binding agreement to let had been proved, no damages would be granted on that account, as they were too remote.—*Smith* v. *Day*, L.R. 21 Ch. D. 421; 31 W.R. 187.

Landlord and Tenant:—

(iv.) **Ch. Div. P. J.**—*Agreement for Lease—Specific Performance—Lease to be Approved by Lessor.*—Defendant wrote to his solicitor, who was also plaintiff's solicitor, telling him to make plaintiff an offer of a lease of certain premises on certain terms, and adding "a proper lease to be drawn up with all proper clauses, and to be approved by me and my solicitor;" and plaintiff accepted the offer: *Held* that these words did not prevent there being a complete contract, and that defendant was not entitled to insist on the lease containing a covenant against underletting.—*Eadie* v. *Addison*, 47 L.T. 543.

(v.) **C. A.**—*Lease—Agreement by Landlord to Provide Machinery—Destruction by Fire—Liability for Rent.*—Plaintiffs let to defendant the room and power in a cotton mill in consideration of a certain annual payment, and there was a proviso that plaintiffs should supply certain machinery and steam power. During defendant's occupation the premises were destroyed by fire: *Held* that defendant was liable for rent subsequently to the destruction by fire.—*Marshall* v. *Schofield*, 47 L.T. 406; 31 W.R. 134.

(vi.) **Q. B. Div.**—*Lease—Assignment—Assignment of Reversion of Part of Premises—Apportionment—32 Hen. VIII., c. 34.*—Defendant, who was tenant of land under a lease for years granted by plaintiffs, assigned all her interest in the term, and subsequently plaintiffs granted the reversion in part of the demised premises. No rent having been paid by defendant's assignées, plaintiffs sued her for arrears of rent accrued due since the grant of the reversion by them, claiming a fair apportionment of the rent in respect of the reversion remaining in them: *Held* that the covenant in the lease to pay rent was divisible, that the rent could be apportioned, and that plaintiffs were entitled to recover.—*Mayor of Swansea* v. *Thomas*, L.R. 10 Q.B.D. 48.

(i.) **C. A.**—*Lease of Chapel—Covenant—Construction—Regular Clergyman.*—A lease of a chapel was granted containing a covenant by the lessees not to permit any clergyman or person to officiate or perform divine service therein but such as should be a regular clergyman of the Church of England: *Held* that it was a breach of the covenant to allow a clergyman of the Church of England to officiate in the chapel who had been inhibited by the bishop from performing divine service in the diocese, and to whom the vicar of the parish in which the chapel was, had refused leave to perform service therein.—*Governors of Founding Hospital* v. *Garrett*, 47 L.T. 230.

(ii.) **C. A.**—*Relief Against Forfeiture—Pending Proceedings—Conveyancing Act*, 1881, *s.* 14—*Ord.* 58, *r.* 5.—Section 14 of Conveyancing Act, 1881, applies to cases of breaches committed, actions brought, and appeals from judgments delivered, before the commencement of the Act.—*Quilter* v. *Mapleson*, L.R. 9 Q.B.D. 672; 52 L.J. Q.B. 44; 47 L.T. 561; 31 W.R. 75.

Lands Clauses Act:—

(iii.) **C. A.**—*Compensation—Inquisition—Certiorari—Delay.*—On an application for a certiorari to quash an inquisition before the sheriff as to the amount of compensation payable to a claimant under the Lands Clauses Act, on the ground of an improper mode of assessment having been adopted by the jury, the Court refused to grant the writ, as the applicant had allowed five months to expire without making any objection.—*Regina* v. *Sheward*, L.R. 9 Q.B.D. 741.

(iv.) **Ch. Div. F. J.**—*Compulsory Powers—Easement—Compensation*—8 *&* 9 *Vict.*, *c.* 18, *s.* 85.—A railway company was entitled by a special Act to acquire compulsorily an easement of tunnelling under land, unless a jury should find that the easement could not be acquired without material detriment to the rest of the land: *Held* that the company might enter upon the land for the purpose of tunnelling under sec. 85 of Lands Clauses Act, 1845, on depositing the value of the easement.—*Hill* v. *Midland Rail. Co.*, L.R. 21 Ch. D. 143; 47 L.T. 225.

(v.) **C. A.**—*Interim Investment—Cash under Control of Court*—23 *&* 24 *Vict.*, *c.* 38, *s.* 10.—Purchase-money paid into Court under the Lands Clauses Act, 1845, is cash under the control of the Court within sec. 10 of 23 & 24 Vict., c. 38; and may be invested in East India 3½ per cent. stock created since the General Order of 1st February, 1861.—*Ex parte St. John's College, Cambridge*, L.R. 22 Ch. D. 93; 31 W.R. 55.

(vi.) **Ch. Div. K. J.**—*Payment out—Fund not dealt with for Fifteen Years—Costs of Official Solicitor.*—Where money exceeding £500, and representing the purchase-money of settled lands taken by a railway company, had not been dealt with for fifteen years: *Held* that the costs of the official solicitor, whom it was necessary to serve, were payable out of the portion of the fund which came to the tenant for life, and not by the company.—*Re Clerke's Estate*, L.R. 21 Ch. D. 776.

(vii.) **Ch. Div. P. J.**—*Superfluous Land—Boundary Wall—Railway Company.*—Where a railway company had a field which was superfluous land, and which was bounded on one side by a wall: *Held* that they need not, on selling the field, retain so much earth on the further side of the wall as would lie between the wall and a vertical line drawn from the footings of the wall.—*Ware* v. *London, Brigton & South Coast Rail. Co.*, 47 L.T. 541; 31 W.R. 228.

Licensed House:—

(viii.) **Q. B. Div.**—*Beer-house—Off License—Refusal to Renew*—11 *Geo. IV. &* 1 *Will. IV.*, *c.* 64; 45 *&* 46 *Vict.*, *c.* 34.—Justices may refuse to renew

license to sell beer not to be consumed on the premises on the ground only that such a license is not required in the district.—*Kay* v. *Over Darwen Justices*, 47 L.T. 411.

Limitations, Statutes of:—

(i.) **Ch. Div. C. J.**—*Wrongful Possession—Tenancy in Common.—3 & 4 Will. IV., c. 27, ss.* 12, 34.—Lands were devised to trustees on trust for A. for life, and after his death to sell, and divide proceeds between M., S., T., and J. equally. On A.'s death in 1857, T. and J. entered on the lands, and remained in possession till J.'s death in 1874. T. then remained in sole possession till his death in 1880: *Held* that T. had acquired the fee simple of the lands at that date.—*Bolling* v. *Hobday*, 31 W.R. 9.

Lord Mayor's Court:—

(ii.) **Q. B. Div.**—*Judgment for less than £20—Removal to High Court*—35 & 36 *Vict.*, c. 86, *s.* 6; *Sch. r.* 9.—There is nothing in the Borough and Local Courts of Record Act, 1872, to restrict the liberty which a party, who has recovered judgment in the Lord Mayor's Court for less than £20, possesses to remove such judgment either into the High Court or County Court.—*Payne* v. *Slater*, 47 L.T. 386.

Lunacy:—

(iii.) **C. A.**—*Maintenance—Allowance for Past Maintenance—Two Funds.*—The brother of a lunatic not so found, having advanced money for her maintenance for several years, died, and she was then found a lunatic by inquisition. The Court made an allowance to the brother's estate for past maintenance of the lunatic limited to advances made within six years before his death. When a lunatic is entitled to property for life as well as property absolutely, the Court will apply the life interest primarily towards the lunatic's maintenance.—*Re Weaver*, L.R. 21 Ch. D. 615; 31 W.R. 224.

(iv.) **C. A.**—*Parties entitled to attend Proceedings—Illegitimate Lunatic—Attorney-General of Duchy of Lancaster.*—A lunatic who was illegitimate and unmarried was resident within and had copyhold property held of the Duchy of Lancaster: *Held* that the Attorney-General of the Duchy was not entitled to attend proceedings in lunacy, as well as the Queen's Attorney-General.—*Re Kershaw*, L.R. 21 Ch. D. 613; 31 W.R. 130.

Master and Servant:—

(v.) **C. A.** —*Apprentice—Change of Locality of Business—Division of Business.*—Plantiff was bound apprentice to four partners who carried on business in London as engineers. Before the expiration of the term of apprenticeship, the partnership was dissolved and divided into two firms, one in London for selling only, and one in Derby for manufacturing, and defendant was called upon to attend at the place of business at Derby: *Held* that there was an implied stipulation that the contract should be performed in London, and that plaintiff could not be required to go to Derby; also that as the business was divided between two firms neither of them was entitled to plaintiff's services.—*Eaton* v. *Western*, L.R. 9 Q.B.D. 636; 52 L.J. Q.B. 41.

(vi.) **Q. B. Div.**—*Injury to Workman—Defect in condition of Way*—43 & 44 *Vict.*, *c.* 42, *s.* 1 (1).—A servant of defendants in the ordinary course of his duty, was running a trolly along a metal way, and a substance called "tap" had been allowed to fall on the way, whereby the trolly was overturned, and he was injured: *Held* that the obstruction did not constitute a defect in the condition of the way within sec. 1, sub-sec. 1 of the Employers Liability Act, 1880.—*McGiffen* v. *Palmer's Shipbuilding Co.*, L.R. 10 Q.B.D. 5; 52 L.J. Q.B. 25; 47 L.T. 346; 31 W.R. 118.

(i.) **Q. B. Div.**—*Injury to Workman—Negligence of Foreman*—43 & 44 *Vict.*, *c.* 42, *s.* 1.—A boy under fifteen, in defendants' employ, was ordered by the foreman to drive a two-horse van to the market. There was a rule of the defendant company, which the boy knew of, forbidding anyone under fifteen to drive a van. While driving the van the boy was thrown out and injured: *Held* that the order of the foreman was not an order to which the boy was bound to conform, and therefore the Employers Liability Act did not apply.—*Bunker* v. *Midland Rail. Co.*, 47 L.T. 476; 31 W.R. 231.

Metropolitan Management:—

(ii.) **Ch. Div. F. J.**—*Drainage—Local Board outside Area—Right to drain into Metropolitan Board's Sewers*—18 & 19 *Vict.*, *c.* 120, *s.* 135.—The Metropolitan Board of Works took into their drainage system a brook which the A. local board, outside the metropolitan area, had used as a means of drainage: *Held* that the A. board were not entitled to use the brook to carry off drainage to a greater extent than such right had been acquired by prescription, so as to cause an additional quantity of sewage to flow into the Metropolitan Board's drains.—*Attorney-General* v. *Acton Local Board*, 47 L.T. 510; 31 W.R. 153.

(iii.) **C. A.**—*Street Improvement—Dwellings of Labouring Classes—Compulsory Purchase.*—By a private Act incorporating the Lands Clauses Acts, the Metropolitan Board of Works was empowered to enter upon, take, use, and hold certain lands compulsorily; and by sec. 33 of the private Act it was provided that the Board should not take fifteen houses or more occupied by labourers until they had proved, to the satisfaction of a Secretary of State, that suitable accommodation was provided elsewhere: *Held* that the Board was entitled to proceed with the preliminary steps for acquiring compulsorily more than fifteen houses occupied by labourers, without first complying with the conditions of sec. 33.—*Spencer* v. *Metropolitan Board of Works*, 47 L.T. 459.

Mortgage:—

(iv.) **C. A.**—*Attornment Clause—Distress under—Bankruptcy of Mortgagor.*—A mortgage to a building society contained a provision that in case of default in payment of the monthly instalments, and the mortgagor should be then in occupation of the premises, he should be tenant thereof from month to month at a monthly rent equal to the amount of the monthly instalments. The mortgagor made default, and the society distrained for rent under the attornment clause on several occasions, the later of such distresses being levied subsequent to the bankruptcy of the mortgagor: *Held* that the society was entitled to retain the proceeds of the sales of the distresses against the trustee in bankruptcy of the mortgagor.—*Ex parte Voisey, Re Knight*, L.R. 21 Ch. D. 442; 47 L.T. 362; 31 W.R. 19.

(v.) **C. A.**—*Foreclosure—Equitable Mortgage—Form of Decree.*—A foreclosure decree upon an equitable mortgage should contain the word "foreclose," in addition to the words used in Form 4, in 2 Seton on Decrees, p. 1,126.—*Lees* v. *Fisher*, 31 W.R. 94.

(vi.) **C. A.**—*Foreclosure—Equitable Mortgage—Injunction to restrain parting with Legal Estates.*—In an action by an equitable mortgagee for sale or foreclosure, the Court granted an interim injunction on his *ex parte* application, to restrain dealing with the legal estate till next motion day, there being ground for believing that defendants intended to part with the legal estate *pendente lite*.—*London & County Banking Co.* v. *Lewis*, L.R. 21 Ch. D. 490; 47 L.T. 501; 31 W.R. 233.

(i.) **Ch. Div. F. J.**—*Judgment—Merger—Rate of Interest.*—By a mortgage deed the mortgagor covenanted to pay the debt on a day named, and to pay interest at £7 per cent. so long as the principal, or any part thereof, remained due. The mortgagee obtained judgment for principal and interest due at date of judgment, with interest at £4 per cent. on this amount: *Held* that he was entitled to sue for the difference between interest at £7 per cent. on the mortgage debt and the interest at £4 per cent. allowed under the judgment.—*Popple* v. *Sylvester*, L.R. 22 Ch. D. 98; 52 L.J. Ch. 54; 47 L.T. 329; 31 W.R. 116.

(ii.) **C. A.**—*Mortgage to secure Moneys due from Mortgagor or Assigns—Advance to Assign.*—W. mortgaged a beer-house to brewers to secure £1,300 and all sums at any time owing to them from W., his executors, administrators, or assigns, on any account; and he died, leaving his property to his wife. She was supplied with beer by the brewers, to whom she made payments from time to time, which discharged the moneys due from W., except the £1,300. Subsequently, the brewers sold the property under a power of sale, and claimed to retain besides the £1,300, money due to them for beer supplied to the widow: *Held* that they were entitled to retain this as against other creditors of W.'s estate.—*Smith* v. *Watts*, L.R. 22 Ch. D. 5.

(iii.) **C. A.**—*Mortgagee in Possession—Sale—Use and Occupation—Permanent Improvements.*—A mortgagee in possession sold the property under his power of sale, a day being fixed for completion of the sale and letting the purchaser into possession; and at the request of the purchaser he let him into possession four months before the appointed day, and did not require him to pay rent: *Held* that the mortgagee could not be charged with an occupation rent for the four months; also that on *primâ facie* evidence that the mortgagee had expended money on permanent improvements increasing the value of the estate, that he was entitled to an enquiry whether the outlay had increased the value, and if so, to be repaid his expenditure.—*Shepard* v. *Jones*, L.R. 21 Ch. D. 469.

(iv.) **Ch. Div. V. C. H.**—*Power of Sale—Conveyance by Executors—37 & 38 Vict., c. 78, s. 4.*—The executors of a deceased mortgagee who has contracted to sell under his power of sale, cannot convey under sec. 4 of Vendor and Purchaser Act, 1874.—*Re White's Mortgage*, 51 L.J. Ch. 856.

Municipal Law:—

(v.) **Ch. Div. V. C. H.**—*Municipal Corporation—Action Against by Freemen—Property held on Trust for—5 & 6 Will. IV., c. 76, s. 2.*—Plaintiffs on behalf of themselves, and all other freemen of a borough, brought an action to establish that property belonging to the corporation was held for the benefit of the freemen individually, and averred that at the time of the passing of the Municipal Corporations Act, 1835, the rents and profits claimed were not, nor ever had, nor ought to have been applied to public purposes, but had been always applied for the benefit of the freemen: *Held* sufficient to bring the case within the saving clause in sec. 2 of the Act, that the action would lie, and need not be by information by the Attorney-General.—*Prestney* v. *Mayor of Colchester*, L.R. 21 Ch. D. 111; 51 L.J. Ch. 805.

(vi.) **C. A.**—*New Street—Line of Buildings—21 & 22 Vict., c. 98, s. 34; 38 & 39 Vict., c. 55, ss. 156, 157.*—The term new street in sec. 34 of Local Government Act, 1858, and sec. 157 of Public Health Act, 1875, applies to an old country road, or lane, which gradually becomes a street by the building of houses along it.—*Robinson* v. *Barton Local Board*, L.R. 21 Ch. D. 621; 51 L.J. Ch. 5; 47 L.T. 286.

Nationality :—

(i.) **Ch. Div. K. J.**—*Descendant born abroad of British Subject—25 Edw. III., st. 1—7 Anne, c. 5; 4 Geo. II., c. 21; 13 Geo. III., c. 21.*—The son and grandson born abroad of a father who is a British subject are, by force of 7 Anne, c. 5, 4 Geo. II., c. 21, and 13 Geo. III., c. 21, natural born subjects; but the nationality cannot be transmitted further.—*De Geer* v. *Stone*, 47 L.T. 434; 31 W.R. 241.

Negligence :—

(ii.) **Ch. Div. Field J.**—*Overflow of Water—High Tide—Defect in Bank—Act of God.*—Defendants leased a part of their dock wall to a company, the lessees covenanting to maintain a channel through the wall into the dock. During an unusually high tide and a strong gale the water entered the dock through the channel in such quantity as to overflow plaintiff's land. The banks of the dock had not been maintained at the height required by the Commissioners of Sewers for the district: *Held* that defendants were liable for the damage.—*Burt* v. *Victoria Graving Dock Co.*, 47 L.T. 378.

Partition :—

(iii.) **Ch. Div. K. J.**—*Parties out of Jurisdiction—Dispensing with Service and Advertisements—39 & 40 Vict., c. 17, s. 3.*—In a partition action the Court cannot, in addition to dispensing with service on parties out of the jurisdiction, dispense with the advertisements directed by sec. 3 of Partition Act, 1876.—*Hacking* v. *Whalley*, 51 L.J. Ch. 944.

(iv.) **C. A.**—*Trust for Sale—31 & 32 Vict., c. 40, s. 4.*—The Court has no jurisdiction, at the instance of the tenant for life and reversioners *sui juris* and beneficially interested to the extent of a moiety, to direct a sale or partition under the Partition Acts, of property over which there is a discretionary power of sale vested in trustees.—*Biggs* v. *Peacock*, 52 L.J. Ch. 1; 47 L.T. 341; 31 W.R. 148.

Partnership :—

(v.) **Ch. Div. V. C. B.**—*Appointment of Receiver—Dissolution not claimed.*—In a partnership action where there was no claim for a dissolution, the Court on an interim motion, appointed a receiver not being a manager of the partnership business.—*Medwin* v. *Ditcham*, 47 L.T. 250.

(vi.) **C. A.**—*Death of Partner—Receiver—Deposit of Deeds with Surviving Partner—Charge.*—At the time of the death of one member of firm of solicitors the firm was indebted to R. for money given by her to be invested by the firm. The executors of the deceased partner brought a partnership action, and H., the surviving partner, was appointed receiver, jointly with another person. H., without the knowledge of his co-receiver, allowed R. to obtain possession of deeds forming part of the partnership property: *Held* that H. had no power to give R. a security upon the deeds for the money due to her, and that she must surrender them to the receivers.—*Hills* v. *Reeves*, 31 W.R. 209.

Poor Law :—

(vii.) **C. A.**—*Rate—Occupation—Railway Book-stall.*—Decision of Q. B. Div. (see iv., p. 10) affirmed.—*Smith* v. *Lambeth Assessment Committee*, 52 L.J. M.C. 1.

(viii.) **Q. B. Div.**—*Settlement—Derivative Birth—39 & 40 Vict., c. 61, s. 35.*—**An order was made for removal of a pauper wife and her three children, aged from five to one years, to a union, on the ground that the settlement of her husband was the birth settlement of his father within that union. On appeal, the birth settlement of the husband's**

father was proved, but no other settlement of the husband or his father was set up: *Held* that the wife took the settlement of her husband, and that the children ought to be deemed to be settled in the parishes in which they were born.—*Regina* v. *Bridgnorth Guardians*, L.R. 9 Q.B.D. 765; *Madeley Guardians* v. *Bridgnorth Guardians*, 51 L.J. M.C. 17; 47 L.T. 301.

(i.) **Q. B. Div.**—*Settlement—Deserted Wife—24 & 25 Vict., c.* 55, *s.* 3.—A woman in 1873 left her husband and went away with another man with whom she lived till 1879. She then wrote to her husband to ask him to take her back, but he took no notice of the letter, and would not have received her if she had come back. In 1881 she became chargeable to the parish of L. as a pauper lunatic: *Held* that there was no evidence of desertion by the husband within sec. 3 of 24 & 25 Vict., c. 55.—*Regina* v. *Cookham Union*, L.R. 9 Q.B.D. 522.

Practice:—

(ii.) **C. A.**—*Administration Action—Revocation of Probate.*—A decree was made at the suit of residuary legatees to administer a testator's estate. Afterwards a subsequent will was found disposing of the estate differently; and probate of the old will was recalled, letters of administration with the later will annexed being granted to a beneficiary. On proof of these circumstances the Court of Appeal dismissed the administration action.—*Dean* v. *Wright*, L.R. 21 Ch. D. 581; 47 L.T. 501; 31 W.R. 174.

(iii.) **Q. B. Div.**—*Appeal—Costs—Confession of Defence—Ord.* 20, *r.* 3.—There is no appeal, without leave, from a refusal of a judge at chambers to deprive a plaintiff of his costs under Ord. 20, r. 3.—*Perkins* v. *Beresford*, 47 L T. 515.

(iv.) **C. A.**—*Appeal—Informal Notice of.*—Within the time for appealing, appellants wrote to respondent "we are advised to and intend to give notice of appeal." A formal notice was given afterwards which was out of time: *Held* that the appeal was too late and could not be heard.—*Re New Callao Co.*, 31 W.R. 185.

(v.) **C. A.**—*Appeal—Security for Costs—Time.*—An application for security for costs of an appeal must be made promptly, and, as a general rule, it is too late if made when the appeal is in the paper for hearing; but the Court will take into account special circumstances.—*Re Indian Kingston, &c., Gold Mining Co.*, L.R. 22 Ch. D. 83; 52 L.J. Ch. 31; 31 W.R. 34.

(vi.) **C. A.**—*Appeal on point of Law—Staying trial of Issues pending—Ord.* 58, *r.* 16.—Where there is an appeal upon a question of law raised on demurrer or preliminary objection, the Court will not stay the trial of issues of fact pending the appeal.—*Re Palmer*, L.R. 22 Ch. D. 88; 31 W.R. 33.

(vii.) **Q. B. Div.** —*Certiorari—Action in County Court—Employers Liability Act—43 & 44 Vict., c.* 42—Plaintiff having brought one action in the County Court for compensation for injury while in defendant's service, under the Employers Liability Act, 1880, and another action in the High Court to try the question of defendant's liability at Common Law, in which he claimed more than £50, sought to remove the County Court Action into the High Court for purposes of consolidation. Leave was refused.—*Munday* v. *Thames Ironworks Co.*, 47 L.T. 351.

(viii.) **Ch. Div. F. J.**—*Contempt—Injunction.*—The Court has jurisdiction to restrain a person by injunction from doing an act, which, if committed, would be contempt of Court.—*Kitcat* v. *Sharp*, 31 W.R. 227.

(i.) **Ch. Div. P. J.**—*Continuing Cause of Action—Misrepresentation—Action for Damages.*—A tenant brought an action in the County Court against his landlord for fraudulent misrepresentation as to the state of drainage of the farm subject to the tenancy, and obtained damages: *Held* that he was estopped from bringing a subsequent action in the High Court for damages suffered since the judgment of the County Court.—*Clarke* v. *Yorke*, 52 L.J. Ch. 32; 47 L.T. 381; 31 W.R. 62.

(ii.) **C. A.**—*Costs—Administration—Adjournment before Judge.*—Where, in an administration action, a mortgagee *bonâ fide* makes a claim which the Chief Clerk disallows, he is entitled to have the point heard by the Judge, and will be allowed his costs though unsuccessful.—*Smith* v. *Watts*, L.R. 22, Ch. D. 5.

(iii.) **Ch. Div. F. J.**—*Costs—Administration Action.*—A tenant for life who had duly received the income of the estate, and to whom proper accounts had been rendered, instituted an action for administration, and the accounts showed that he had been slightly over-paid: *Held* that he must have no costs of the action, and must pay the costs of taking the income account.—*Croggan* v. *Allen*, L.R. 22 Ch. D. 101; 47 L.T. 437.

(iv.) **Ch. Div. K. J.**—*Costs—Affidavit of Documents—Prolixity.*—An affidavit of documents setting out a large number of letters instead of referring to them, was ordered to be taken off the file, the costs to be paid by defendants.—*Walker* v. *Poole*, L.R. 21 Ch. D. 835; 51 L.J. Ch. 840.

(v.) **Ch. Div. N. J.**—*Costs — Defaulting Trustee — Bankruptcy.* — The trustee of a settlement became bankrupt shortly after the commencement of an action for executing the trusts, and an order was made for payment by him of a sum due to the estate: *Held* that he was entitled to costs of the action, but was not to receive them till he had made good his default.—*Lewis* v. *Trask*, L.R 21 Ch. D. 862.

(vi.) **Ch. Div. K. J.**—*Costs—Liberty to Attend.*—Mere liberty to attend proceedings under an administration judgment does not entitle the parties having the liberty to costs of attendance in chambers, as a matter of course.—*Day* v *Batty*, 21 Ch. D. 830.

(vii.) **C. A.**—*Costs—Taxation—Attendance of Counsel at Chambers—Rules of Court*, 1875 (*Costs*), r 14.—Rule 14 of Special Allowances (Costs), 1875, applies to taxation of costs as between solicitor and client, as well as between party and party.—*Re Chapman*, L.R. 10 Q.B.D. 54; 47 L.T. 426.

(viii.) **Q. B. Div.**—*Costs—Taxation—Counterclaim.*—Plaintiff claimed £50, which defendant admitted, and counterclaimed for £75. Judgment was given for plaintiff on the claim, and for defendant for £40 on the counterclaim, plaintiff to have costs of claim, and defendant of counterclaim: *Held* that plaintiff was entitled to the costs of the cause up to the delivery of defence, and defendant to such costs after the delivery. *Bowker* v. *Kesteren*, 47 L.T. 545.

(ix.) **C. A.**—*Costs—Taxation—Recovery of Land—Higher or Lower Scale.*—An action to recover land in which plaintiff alleged fraud was dismissed without costs. The costs of plaintiff's solicitor were taxed on the lower scale: *Held* that an appeal lay from the order of the Judge confirming such taxation; but that the fact of fraud being alleged did not take the case out of Ord. 6, r. 1 of Rules of Court (Costs) 1875.—*Re Terrell*, 31 W.R. 208.

(x.) **Q. B. Div.**—*Costs—Taxation—Trespass—Injunction.*—An action for damages for a trespass, and for an injunction to restrain a repetition of it, where the injury done is slight, is not an action for an injunction within Rules of Court (Costs) Ord. 6, r. 2; and the costs should be

taxed on the lower scale, though the trespass was committed as an assertion of title to the property. "Breaches of Covenant," in this rule refers to covenants under seal.—*Goodhand* v. *Ayscough*, 31 W.R. 114.

(i.) **Q. B. Div.**—*Discovery—Interrogatories—Answer tending to Criminate—Libel.*—In an action for a libel plaintiff delivered interrogatories to prove the publication, and defendant objected to answer on the ground that to do so might tend to criminate him: *Held* a sufficient answer.—*Lamb* v. *Munster*, 52 L.J. Q.B. 46; 47 L.T. 442; 31 W.R. 117.

(ii.) **C. A.**—*Discovery—Interrogatories—Matters known to Agent or Servant.*—A party interrogated as to facts known to his servants or agents in the ordinary course of their duty, must, if necessary, ascertain them; but it is sufficient to answer that the servants or agents possessing the knowledge are so situated that it is unreasonable to ask him to communicate with them.—*Bolckow* v. *Fisher*, 52 L.J. Q.B. 12; 31 W.R. 235.

(iii.) **C. A.**—*Discovery—Production of Documents.*—On an application for discovery of documents said to assist in establishing applicant's title, it is not sufficient, in order to resist discovery, to deny that the documents assist applicant, when the Court is reasonably certain that they must do so.—*Attorney-General* v. *Emerson*, 31 W.R. 191.

(iv.) **Q. B. Div.**—*Discovery—Production of Documents—Possession of by Defendant and Another.*—Defendant in his affidavit of documents swore that certain documents were in the joint possession of himself and a person not a party to the action, and were their muniments of title: *Held* that plaintiff was not entitled to inspection of these documents.—*Kearsley* v. *Philips*, L.R. 10 Q.B.D. 36; 52 L.J. Q.B. 8; 31 W.R. 92.

(v.) **C. A.**—*Evidence—Withdrawal of Affidavit—Cross-examination of Witness—15 & 16 Vict., c. 86, s. 40.*—Where a person has made and filed an affidavit for the purpose of being used in a matter pending before the Court, he cannot be exempted from cross-examination by the withdrawal of the affidavit.—*Ex parte Young, Re Quartz Hill Gold Mining Co.*, L.R. 21 Ch. D. 642; 51 L.J. Ch. 940; 31 W.R. 173.

(vi.) **C. A.**—*Fi. fa.—Seizure by Sheriff—Trespass—Action—Costs.*—Under a writ of *fi. fa.* against a son, the sheriff seized goods of the father, with whom the son lived, and the father having given him verbal notice that the goods were his, the sheriff issued an interpleader summons. The father brought an action against the sheriff alone for an injunction to restrain him from retaining possession: *Held* that the action was premature, and that he must pay the costs, and that the execution creditor ought to have been a party to the action.—*Hilliard* v. *Hanson*, L.R. 21 Ch. D. 69; 47 L.T. 342; 31 W.R. 151.

(vii.) **Ch. Div. V. C. B.**—*Foreclosure—Motion for Judgment—Conveyancing Act*, 1881, *s.* 25 (2).—Upon motion for judgment in an action where a mortgagee claims only foreclosure, and the mortgagor does not appear, the Court will not exercise its discretion under sec. 25, sub-sec. 2 of Conveyancing Act, 1881, unless the mortgagor has had notice of the intention of the mortgagee to ask for a sale.—*Western District Bank* v. *Turner*, 47 L.T. 433; *South-Western District Bank* v. *Turner*, 31 W.R. 113.

(viii.) **Q. B. Div.**—*Motion for Judgment—Jury Discharged—Ord.* 40, *r.* 3.—A Judge cannot be said to have abstained from giving judgment within the meaning of Ord. 40, r. 3, unless he has been asked to give judgment at the trial.—*Davenport* v. *Ward*, 47 L.T. 348.

(ix.) **Q. B. Div.**—*Particulars—Action for Seduction.*—In an action for seducing plaintiff's daughter: *Held* that defendant was not entitled to particulars of times and places, unless he first filed an affidavit denying the seduction.—*Thompson* v. *Birkley*, 31 W.R. 230.

(i.) **Q. B. Div.**—*Parties—Adding Plaintiff—Ord.* 16, *r.* 13.—In an action for an injunction to restrain defendants from using certain premises as a small-pox hospital, an application under Ord. 16, r. 13 by plaintiff to add another person as plaintiff with his consent, who lived in the same neighbourhood, on the ground that since action brought plaintiff had made arrangements to leave the neighbourhood, was refused.—*Dalton* v. *St. Mary Abbott's Guardians*, 47 L.T. 349

(ii.) **Q. B. Div.**—*Parties—Bankruptcy of Plaintiff—Election of Trustee not to Proceed.*—Where plaintiff in an action becomes bankrupt and his trustee elects not to go on with the action, plaintiff cannot proceed with it.—*Warder* v. *Saunders*, 47 L.T. 475.

(iii.) **C. A.**—*Parties—Death of Defendant—Action in Tort—3 & 4 Will. IV., c.* 42, *s.* 2.—Where defendant to an action founded on tort dies before the trial, and at a date later than six months after commencement of action, the further proceedings in the action cannot be carried on against his legal personal representatives.—*Kirk* v. *Todd*, L.R. 21 Ch. D. 484; 31 W.R. 69.

(iv.) **Ch. Div. F. J.**—*Payment into Court—Trustee Relief Act—Notice—Chancery Funds (Amended) Orders*, 1874, *r.* 5.—Money having been left to A., but should he not return to England within seven years from testatrix's death, then to other persons, after the lapse of the seven years the executor paid the money into Court under the Trustee Relief Act. A. was last heard of four years ago in Australia. The money was allowed to be paid out to the persons entitled under the gift over, and service upon A. of notice of payment into Court was dispensed with.—*Re Whitaker*, 47 L.T. 507; 31 W.R. 114.

(v.) **C. A.**—*Pleading—Action on Foreign Judgment—Fraud.*—In an action on a foreign judgment, a defence that the judgment was obtained by a fraudulent misrepresentation to the foreign Court is good.—*Abouloff* v. *Oppenheimer*, 52 L.J. Q.B. 1; 47 L.T. 325; 31 W.R. 57

(vi.) **Ch. Div. F. J.**—*Pleading—Right of Way—Ord.* 27, *r.* 1.—A plaintiff who claims a right of way over a road, and seeks an injunction to restrain an obstruction, should state, in his claim, the way in which he claims the right, and the limitations of the road over which he claims it.—*Harris* v. *Jenkins*, 47 L.T. 570; 31 W.R. 137.

(vii.) **C. A.**—*Receiver—Disputed Title—Judicature Act*, 1873, *s.* 25.—The Court has power under sec. 25 of Judicature Act, 1873, to appoint a receiver where the title to property is disputed.—*Berry* v. *Keen*, 51 L.J. Ch. 912.

(viii.) **Ch. Div. C. J.**—*Recovery of Land—Foreclosure—Writ of Possession—Ord.* 42, *r.* 3.—A judgment for foreclosure absolute is not a judgment for the recovery of possession of land within Ord. 42, r. 3.—*Wood* v. *Wheater*, 47 L.T. 440; 31 W.R. 117.

(ix.) **Ch. Div. K. J.**—*Reference—Referring back Report—Time—Motion to Confirm—Judicature Act*, 1873, *ss.* 56-58—*Ord.* 36, *r.* 34.—There is no time limited within which a motion to remit for further consideration the report of an official referee on an account must be made. It is unnecessary to move to confirm such report. An official referee is not required to state reasons for his findings.—*Walker* v. *Bunkell*, 31 W.R. 138.

(x.) **Q B. Div.**—*Security for Costs—Joint Plaintiffs—One residing Abroad—Ord.* 16, *r.* 1.—An action was brought against defendant by two plaintiffs, one residing abroad, and their statement of claim alleged a contract by defendant with the plaintiffs jointly, and in the alter-

native with each plaintiff separately: *Held* that the plaintiff abroad could not be required to give security for costs.—*D'Hormusgee* v. *Grey*, L.R. 10 Q.B.D. 13.

(i.) **Ch. Div. F. J.**—*Sequestration—Money in Hands of Third Person—Payment into Court.*—Where bankers had in their hands money belonging to a person against whom sequestration had issued, it was ordered that it should be paid into Court, and the costs of plaintiff and the bankers, and the remuneration of the sequestrators, paid out of it.—*Miller* v. *Huddlestone*, 47 L.T. 570; 31 W.R. 138.

(ii.) **C. A.**—*Service of Pleadings—Time—Ord.* 24, *r.* 1; 57, *r.* 6.—The time for delivering a reply which would have expired on 25th of July, was extended to the 19th of September: no reply having been received on 26th September, defendant served notice of motion for judgment, and on the same day plaintiff, by leave, served notice of motion for leave to deliver a reply, which was refused on the ground of unexplained delay: *Held* that leave should have been granted on the terms of plaintiff paying the costs.—*Eaton* v. *Storer*, L R. 22 Ch. D. 91.

(iii.) **C. A.**—*Service out of Jurisdiction—Ord.* 11, *r.* 1.—No leave will now be given to serve a writ out of the jurisdiction except in cases within Ord. 11, r. 1.—*Eager* v. *Johnstone*, L.R. 22 Ch. D. 86; 52 L.J. Ch. 56; 31 W.R. 33.

(iv.) **Ch. Div. V. C. B.**—*Service out of Jurisdiction—Notice in lieu of—Ord.* 9, *r.* 13.—Ord. 9, r. 13, as to indorsement of the date of service on the writ does not apply where notice out of the jurisdiction in lieu of service of the writ of summons has been allowed.—*Fish* v. *Chatterton*, 47 L.T. 328; 31 W.R. 87.

(v.) **Ch. Div. F. J.**—*Special Indorsement—Foreclosure Action—Covenant to pay in Mortgage—Ord.* 3, *r.* 6; 14, *r.* 1*a*.—Where the writ in a foreclosure action was specially indorsed with a claim for the amount due on the covenant to pay on the mortgage deed, an application to enter judgment under Ord. 14, r. 1a, for the amount claimed, before the hearing of the action, was refused.—*Hill* v. *Sidebottom*, 47 L.T. 224.

(vi.) **Q. B. Div.**—*Special Indorsement—Leave to Defend—Bill of Exchange—Ord.* 14, *r.* 1.—In an action on a bill of exchange, plaintiff alleged that he was a *bonâ fide* holder for value of the bill, and defendant in his affidavit for leave to defend, alleged that the bill was drawn in fraud on him: *Held* that defendant was entitled to unconditional leave to defend.—*Fuller* v. *Alexander*, 47 L.T. 443.

(vii.) **C. A.**—*Suit in Equity before Judicature Acts—Legal Demand—Jurisdiction—Judicature Act*, 1873, *s.* 22.—Where a suit in the Court of Chancery, in which plaintiff's claim was a purely legal demand, was pending at the time of the commencement of the Judicature Acts: *Held* that a decree could be made now, though the bill could not have been maintained under the former practice.—*Hurst* v. *Hurst*, L.R. 21 Ch D. 278.

(viii.) **Ch. Div. F. J.**—*Writ—Error in—Amending—Ord.* 27, *r.* 11.—A writ issued in the present year purported to be tested by Lord Cairns as Lord Chancellor: *Held* that the Judge had power under Ord. 27, r. 11, to give leave to amend.—*Pleasants* v. *East Dereham Local Board*, 47 L.T. 439.

(ix.) **Q. B. Div.**—*Writ—Error in Copy of—Judgment in Default of Appearance.*—Judgment was obtained by plaintiff in default of appearance on a specially indorsed writ. The copy of the writ served upon defendant contained the date 1880 instead of 1881 in the *teste*. This error was

not discovered in the affidavit of service: *Held* that defendant was not entitled to have the judgment set aside.—*Wesson* v. *Stalker*, 47 L.T. 444.

Principal and Agent:–

(i.) **C. A.**—*Dealing with Agent—Discharge of Principal.*—In order to discharge a principal from his liability for a debt contracted by his agent, the principal must show that the creditor has misled him into supposing that he has elected to give exclusive credit to the agent, and that the principal has been thereby prejudiced. Mere delay in enforcing payment from the agent will not be sufficient.—*Davison* v. *Donaldson*, L.R. 9 Q.B.D. 623; 47 L.T. 564.

Principal and Surety:—

(ii.) **C. A.**—*Bond to Guardians for Collection of Rates—Neglect of Overseers.*—Defendant gave a bond as surety to the guardians of M. union conditioned for the discharge by C. of his duties as collector of poor rates for the parish of N. within that union. C. absconded, having embezzled part of the rates and allowed part to be lost by not collecting them. It appeared that if the overseers of N. had discharged their statutory duties with care the loss from non-collection might not have occurred: *Held* that the guardians were entitled to recover the amount lost through C.'s neglect, as well as through his embezzlement.—*Mansfield Guardians* v. *Wright*, L.R. 9 Q.B.D. 683.

(iii.) **C. A.**—*Continuing Guarantee—Death of Co-Surety.*—The death of one of the co-sureties under a joint and several continuing guarantee does not by itself determine the future liability of the surviving co-surety.—*Beckett* v. *Addyman*, L.R. 9 Q.B.D. 783; 51 L.J. Q.B 597.

Probate:—

(iv.) **P. D. A. Div.**—*Infants—Guardian ad Litem.*—Where a will is disputed by a guardian *ad litem* on behalf of infants, the Court has power to enquire whether the suit is for their benefit.—*Percival* v. *Cross*, L.R. 7 P.D. 234; 52 L.J. P.D.A. 16; 47 L.T. 353; 31 W.R 124.

(v.) **P. D. A. Div.**—*Proof in Solemn Form—Costs—Residuary Legatee under Prior Will.*—The rule and practice by which a party may compel proof of a will in solemn form without liability for costs, do not extend to a residuary legatee under a prior will.—*Hockley* v. *Wyatt*, L.R. 7 P.D. 239; 51 L.J. P.D.A. 92; 47 L.T. 354.

Public Health:—

(vi.) **Ch. Div. V. C. B.**—*Local Board—Compromise of Action by—Agreement not under Seal—38 & 39 Vict., c. 55.*—An agreement by a local board compromising an action is not within the Public Health Act, 1875, and is not void by reason of its not being under seal.—*Attorney-General* v. *Gaskill*, 47 L.T. 566; 31 W.R. 135.

(vii.) **C. A.**—*Paving Rate—Notice of Demand—Appeal—Time—38 & 39 Vict., c. 55, ss. 150, 268.*—Decision of Q. B Div. (see iv., p. 14) affirmed.—*Regina* v. *Local Government Board*, 52 L.J. M.C. 4; 31 W.R 72.

(viii.) **Q. B. Div.**—*Unsound Meat—Seizure after Sale—38 & 39 Vict., c. 53, ss. 116, 117.*—H. exposed for sale meat alleged to be unfit for the food of man, which was purchased and taken away by C. Three days afterwards the inspector of nuisances went to C.'s house, and by C.'s leave took away the meat, which was afterwards condemned by a justice: *Held* that the justices were right in refusing to convict H. on an information under sec. 117 of Public Health Act, 1875.—*Vinter* v. *Hind*, 31 W.R. 198.

Railway :—

(i.) **Q. B. Div.**—*Carrier—Liability—Delay in Transmission of Goods.*—Certain bales marked "rags," were forwarded by defendants' railway by plaintiffs, and should have been delivered to consignees within twenty-four hours. By mistake they were not delivered for several days, and being damp, they had become heated and were spoilt. If they had been packed dry, or delivered within twenty-four hours, they would not have been injured: *Held* that plaintiffs were only entitled to nominal damages. *Baldwin* v. *London Chatham and Dover Rail. Co.*, L.R. 9 Q.B.D. 582.

(ii.) **C. A.**—*Carrier—Negligence—Damages—Temporary Loss*—11 *Geo. IV. and* 1 *Will. IV.*, *c.* 68, *s.* 1.—Plaintiff delivered to defendant a trunk to be sent by rail from London to Liverpool and thence by steamer to Italy. By defendant's negligence the trunk was sent to the Victoria Docks and thence to New York, and plaintiff did not get it for a long time: *Held* that defendant was not deprived of the protection of the Carriers' Act by the fact that the loss was temporary: and that plaintiff was not entitled to recover as damages the cost of the repurchase of articles in place of those temporarily lost.—*Millen* v. *Brash*, 31 W.R. 190.

(iii.) **C. A.**—*Compulsory Purchase—Entry—Lands Clauses Act*, 1845, *ss.* 68, 85.—A railway company gave notice of its intention to take lands, but took no further steps till within thirteen days from the time when the period for completion of the company's works expired, when the company entered on the lands under sec. 85 of the Lands Clauses Act, 1845: *Held* that the right to exercise compulsory powers had ceased; and that the owner of the lands was entitled to be put in possession of them again. —*Loosemore* v. *Tiverton & N. Devon Rail. Co.*, L.R. 22 Ch. D. 25; 31 W.R. 130.

Revenue :—

(iv.) **H. L.**—*Income Tax—Coal Mine—Deduction for Exhausted Pits*—5 & 6 *Vict.*, *c.* 35; 29 *Vict.*, *c.* 36, *s.* 8.—A tenant of coal mines is not entitled, in computing profits for assessment of income tax, to deduct from the gross profits a sum estimated to represent a capital expended in sinking pits which have been exhausted by the year's working.—*Coltness Iron Co.* v. *Black*, 51 L.J. Q.B. 624.

(v.) **Q. B. Div.**—*Inhabited House Duty*—41 *Vict.*, *c.* 15, *s.* 13 (2).—Premises were occupied as a bank, and a man and his family also lived there, having to keep the premises in order; the man being a clerk in the bank: *Held* that this case did not come within the exemption in sec. 13, sub-sec. 2, of 41 Vict., c. 15.—*Wootten* v. *Rolfe*, 47 L.T. 252.

(vi.) **Q. B. Div.**—*Inhabited House Duty*—41 *Vict.*, *c.* 15, *s.* 13 (2).—Premises were occupied as a bank, and a man also occupied one room therein. He was a clerk in the bank, and it was his duty to see that the premises were locked up at night, the keys being committed to his charge: *Held* that the case fell within the exemption contained in sec. 13, sub-sec. 2, of 41 Vict., c. 15.—*City Bank* v. *Last*, 47 L.T. 254.

Scotland, Law of :—

(vii.) **H. L.**—*Bill of Exchange—Bankruptcy of Drawer and Acceptor.*—The rule established by *ex parte Waring* (19 Ves. 345; 2 Rose 182) as extended by subsequent cases, has not been adopted in Scotland, and is inconsistent with Scotch bankruptcy law.—*Royal Bank of Scotland* v. *Commercial Bank of Scotland*, L.R. 7 App. 366; 47 L.T. 360; 31 W.R. 49.

(i.) **H. L.**—*Burgh—Encroachment by Magistrates on property of—Actio Popularis—Jurisdiction to refuse Interdict.*—A. suing as one of the community applied for suspension and interdict against magistrates of a burgh building municipal stables on a piece of ground vested in them for the use and enjoyment of the community. Pending proceedings the stables were completed at a cost of about £1,900. The interdict was granted, and on appeal by the magistrates they offered to provide another piece of land in substitution for that taken: *Held* that it was not too late for the Court to exercise its discretionary power to refuse the remedy which A. sought, so far as concerned the removal of the stables.—*Grahame* v. *Swan*, L.R. 7 App. 547.

(ii.) **H. L.**—*Construction of Statute—Damage from Escape of Water—Extraordinary Flood.*—By a private Act it was provided that the commissioners under the Act should be bound to make good to R. and her heirs, all damages which might be occasioned to her or them, by reason of or in consequence of any bursting or flow or escape of water from any reservoir, or pipe or other work connected therewith, constructed by the commissioners: *Held* that R. was entitled to compensation for damage by flood waters from the reservoir, no matter how caused.—*Countess of Rothes* v. *Kirkcaldy Waterworks Commissioners*, L.R. 7 App. 694.

(iii.) **H. L.**—*Entail—Trust to make Strict Entail—Heirs whatsoever.*—A. by his final general settlement conveyed his estates to trustees with directions to execute a deed of strict entail of his lands to and in favour of B. and his heirs whatsoever, whom failing to and in favour of C. and his heirs whatsoever, whom failing to persons thereafter to be nominated by A. and failing such nomination then to A.'s own heirs whatsoever and their assignees. B. and C. were A.'s natural sons. C. predeceased A., unmarried, and A. died without executing any deed of nomination of fresh heirs. The trustees then executed a deed in the form of an entail conveying the estates to B. in the terms of destination of A.'s deed; B. died without issue: *Held* that the heir-at-law of A. took no interest under the deed of settlement; and that B. was justified in treating the property as his fee simple.—*Gordon* v. *Gordon*, L.R. 7 App. 713.

(iv.) **H. L.**—*Nuisance—Calcining—Damage to Plantations—Interdict.*—Interdict granted to restrain the appellant company from carrying on their calcining within one mile of respondent's plantations in the same manner as hitherto pursued by them, or in any other manner so as to cause injury to the plantations.—*Schotts Iron Co.* v. *Inglis*, L.R. 7. App. 518.

(v.) **H. L.**—*Superior and Vassal—Restrictions in Feu Charter—Interest.*—Feu rights in land in a town contained restrictions against retailing beer and spirits. The superior sought an interdict to prohibit the defenders, the feuars, from selling beer or spirits, alleging that the town was built on ground held of him as superior, that he was proprietor of certain houses therein, and had a large extent of ground in and adjacent thereto, and that these properties were damaged by the existence of so many public-houses: *Held* that the restrictions sought to be imposed were not personal, against public policy, nor repugnant to the pursuer's estate; and that the interest to sue the action was connected with patrimonial estates, and the pursuer's case was sufficient to entitle him to the relief prayed.—*Earl of Zetland* v. *Hislop*, L.R. 7 App. 427.

(vi.) **H. L.**—*Will—Holograph Document—Ambiguity.*—In the repositories of deceased, who left no other testamentary instrument, was found a holograph writing signed and dated, and complete in its testamentary provisions, but headed "notes of intended settlement by" deceased: *Held* that it was the last will and settlement of deceased.—*Whyte* v. *Pollok*, L.R. 7 App. 400; 47 L.T. 356.

Settled Estates Act:—

(i.) **Ch. Div. K. J.**—*Jurisdiction—Costs of Application to Parliament.*—*Semble* where an estate is settled on legal limitations in favour of one for life with remainder to an infant tenant in tail, the Court has no jurisdiction to order that the costs of an application to Parliament for a private Act to carry out a proposed sale, should be borne by the estate, whether or not such application is successful.—*Stanford* v. *Roberts*, 52 L.J. Ch. 50.

Settlement:—

(ii.) **Ch. Div. F. J.**—*Covenant to Settle after-acquired Property—Reversionary Interest.*—By a marriage settlement it was agreed that if at date of settlement, or during coverture, the wife, or her husband in her right, should become possessed of or entitled to property of the value of £500 or upwards, the same should be conveyed to the trustees of the settlement. At the date of the settlement the wife was entitled to a share in certain accumulations of surplus income, which share did not then or during the coverture amount to £500, but subsequently to the husband's death, and before distribution, it exceeded that amount: *Held* that her share was not subject to the covenant in the settlement.—*Welstead* v. *Leeds*, 47 L.T. 331.

(iii.) **C. A.**—*Voluntary Settlement—Assignment of Leaseholds—Defeating Creditors*—13 *Eliz.*, *c.* 5.—R. gave to a bank a guarantee to secure sums which might become due on H.'s account with the bank, and subsequently he voluntarily assigned all his property, consisting of leaseholds, except a debt due to him from H., to trustees on trust for himself for life, and after his death for his son and daughter. At the time of the assignment a large sum was due from H. to the bank, and three years afterwards H. became bankrupt: *Held* that the assignment by R. was void under 13 Eliz., c. 5.—*Ridler* v. *Ridler*, L.R. 22 Ch. D. 74; 31 W.R. 93.

Ship:—

(iv.) **P. D. A. Div.**—*Action for Necessaries—Transfer of—Sale*—31 *&* 32 *Vict.*, *c.* 71, *s.* 6.—Where a necessaries action against a ship had proceeded to judgment in the City of London Court by which a sale of the ship was ordered, and another action was afterwards brought in the High Court by material men having a possessory lien on the ship, who also entered an appearance in the City of London Court, the sale was stayed, and the action transferred to the High Court on their application.—*The Immacolata Concezzione*, 47 L.T. 388.

(v.) **H. L.**—*Bill of Lading—Set of Three—Right of Indorsee—Warehouseman's Liability.*—The consignees of a cargo to arrive in London indorsed and delivered the first of three bills of lading to plaintiffs to secure money advanced. When the ship arrived the goods were placed in defendants' warehouse, the master signing an authority to defendants to deliver the goods to the holders of the bills of lading. After receipt from the consignees of the second of the bills of lading and after removal of a stop for freight which the master had lodged, defendants delivered the goods to various persons upon delivery orders signed by the consignee. Plaintiff did not know of this until after the consignee's bankruptcy: *Held* that defendants were not liable to plaintiffs for the value of the goods.—*Glynn, Mills & Co.* v. *E. & W. India Docks*, L.R. 7 App. 591; 47 L.T. 309; 31 W.R. 201.

(vi.) **C. A.**—*Charter-party—Demurrage—Detention by Frost—Customary Manner of Loading.*—A charter-party provided that the ship should proceed to a certain port and there load in the customary manner

from freighters' agents a cargo of iron; the cargo to be loaded as fast as the steamer could take on board, and if longer detained, merchants to pay a certain rate of demurrage, "detention by frost, &c., not to be reckoned as lay days." The freighters' agents, unlike most shippers at the port, had no wharf in the docks, but one up a canal connected with the docks, and the cargo was brought to the ship's side in lighters. After the loading began the canal became frozen so that the loading was interrupted. The dock all the time remained unfrozen. The shipowner, when he made the charter-party, did not know who were the freighters' agents: *Held* that the exception in the charter-party as to detention by frost did not apply, and the freighters were liable for demurrage.—*Kay* v. *Field*, 52 L.J. Q.B. 17; 47 L.T. 423.

(i.) **C. A.**—*Charter-party—Final Sailing of Ship.*—By the terms of a charter-party the owners were entitled to an advance of one-third of freight within eight days from final sailing from the ship's last port in the United Kingdom. The vessel was towed about three miles out from the port where she loaded, and then cast anchor, and while lying at anchor her cables parted and she ran ashore. She had never been beyond the limits of the port as defined for fiscal purposes, but had left what, for commercial purposes, is considered the port: *Held* that she must be taken to have finally left her last port.—*Price* v. *Livingstone*, L.R. 9 Q.B.D. 679.

(ii.) **C. A.**—*Charter-party—Measurement of Cargo—Custom.*—By a charter-party it was agreed that a ship should load a cargo and proceed to a port in Great Britain and deliver the same on being paid freight at a certain rate per 180 English cubic feet taken on board, as per Gothenburg custom: *Held* that the freight was to be ascertained by measuring the cargo according to the method used in Gothenburg, and not according to the method used at port of discharge.—*The Skandinav*, 51 L.J. P.D.A. 93.

(iii.) **P. D. A. Div.**—*Collision—Bail—Counter-claim—24 Vict., c. 10, s. 24.*—Where in an action for damage by collision the ship proceeded against is not arrested, and plaintiffs do not require bail to be given, defendants cannot compel plaintiffs to give security to answer a counter-claim in the action, under sec. 24 of Admiralty Court Act, 1861, though they voluntarily give bail.—*The Alne Holme*, 47 L.T. 307.

(iv.) **P. D. A. Div.**—*Collision—Bail—Sale in another Action—Payment into Court.*—Where, after judgment against a ship in a damage action, in which bail has been given and the ship released, judgment is given against the ship in a necessaries action, under which the ship is sold and the proceeds paid into Court, plaintiffs in the damage action cannot be paid out of the proceeds to the prejudice of other claimants having maritime liens upon the proceeds.—*The Falk*, 47 L.T. 308.

(v.) **P. D. A. Div.**—*Collision—Both Ships to blame—Reference—Costs.*—Where, in an action for damage by collision, defendant sets up a counter-claim in respect of the same collision, and both ships are held to blame, and a reference ordered to ascertain the amount of damage, each party is, generally, entitled to the costs of establishing his claim before the registrar, provided that not more than one-fourth of his claim is disallowed.—*The Mary*, L.R. 7 P.D. 201; 31 W.R. 248.

(vi.) **H. L.**—*Collision—Both Ships to blame—Limitation of Liability—25 & 26 Vict., c. 63, s. 54.*—Where two ships have been injured by a collision for which both are in fault, and each has been condemned to pay the moiety of the other's damage, if either party applies to have his liability limited under sec. 514 of Merchant Shipping Act, 1862, a set-off is

allowed between the two accounts, and the other party is entitled to prove against the fund paid into Court for a moiety of the balance due to him after making such set-off.—*Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Co.*, L.R. 7 App. 795; 52 L.J. P.D.A. 1; 47 L.T. 198.

(i.) **P. D. A. Div.**—*Collision—Damages—Wages—Priority of Lien.*—The owners of a vessel who have recovered judgment against another ship in an action for damage by collision have a prior right against the proceeds of such ship to seamen who have recovered judgment against the same ship for wages earned before and after collision.—*The Elin*, 51 L.J. P.D.A. 77.

(ii.) **P. C.**—*Collision—Infringement of Rules as to Lights—Damages—36 & 37 Vict., c. 85, s. 17.*—Where two ships incurred damage by collision, and it was found that one was to blame for improper navigation, and that the other had infringed the regulations as to lights: *Held* that in the absence of proof that such infringement could not have contributed to the collision, the damage must be divided according to the ordinary rule in Admiralty actions.—*China Merchants Steam Navigation Co.* v. *Bignold*, L.R. 7 App. 512; 51 L.J. P.C. 92; 47 L.T. 485.

(iii.) **P. D. A. Div.**—*Collision—Limitation of Liability—Stay of Proceedings.*—Owners of cargo recovered judgment in a collision action, and the owners of the ship carrying the cargo subsequently brought an action against the ship to recover damages in respect of the same collision. The damages in both actions would exceed, but the damage in the cargo action did not exceed, the value of defendant's ship at £8 per ton. The Court refused an application to stay proceedings in the cargo's action until after judgment in the ship's action, made with the object of avoiding the necessity of a limitation of liability action.—*The Alne Holme* (2), 47 L.T. 309.

(iv.) **C. A.**—*Insurance—Construction—Constructive Total Loss.*—One of the bye-laws of an insurance company, subject to which all insurances were made, provided that in the event of any ship being stranded or damaged and not taken into a place of safety the directors might procure its safety, and that no acts done by them under this power should be deemed to be an acceptance or recognition of any abandonment of which the insured might have given notice, and the company under any circumstances should only pay for the absolute damage caused by the perils insured against which was in no case to exceed the sum insured: *Held* that this did not exclude a constructive total loss, but was intended to apply only to a partial loss.—*Forwood* v. *North Wales Marine Insurance Co.*, L.R. 9 Q.B.D. 732.

(v.) **H. L.**—*Insurance—Freight—Option to Discharge Ship—Perils of the Seas.*—Plaintiffs' ship was chartered with the condition that freight was not to be payable in the event of the ship becoming unseaworthy. Plaintiffs insured the freight with defendants against perils of the seas. The ship struck on a rock and was damaged so as to require repairs and the charterers discharged the ship: *Held* that defendants were not liable on the policy.—*Inman Steamship Co.* v. *Bischoff*, L.R. 7. App. 670; 31 W.R. 141.

(vi.) **Q. B. Div.**—*Insurance—Insurable Interests—Goods not specifically Appropriated.*—Plaintiff effected a floating policy of marine insurance on goods, and on the 12th January entered into a contract with D. to buy 200 tons of sugar of a certain description to be shipped from Hamburg to Bristol. D. had previously contracted for the sale of a similar quantity to B., who had also contracted with plaintiff for the sale to him of this amount; such last contract however being void under the Statute of Frauds. D. accordingly shipped 390 tons of sugar at Hamburg,

consigned to "Order, Bristol." No appropriation of the sugar to each of the contracts was made till after the ship had been lost; but D. did make such appropriation before receiving news of the loss. Plaintiff and B. had no notice of this appropriation till after they heard of the loss, when plaintiff declared under the floating policy in respect of both consignments of sugar: *Held* that he had no insurable interest in any of the sugar shipped.—*Stock* v. *Inglis*, L.R. 9 Q.B.D. 708; 52 L.J. Q.B. 30; 47 L.T. 416.

(i.) **Adm. Ct.—Cinque Ports.**—*Salvage—Misconduct of Salvors.*—Violent and overbearing conduct on the part of salvors, though it may not amount to such wilful misconduct as to cause an entire forfeiture of salvage award, will operate to induce the Court to diminish the amount.—*The Marie*, L.R. 7 P.D. 203.

(ii.) **P. D. A. Div.**—*Shipping Casualty—Wrongful Act or Default*—17 & 18 *Vict.*, c. 104, *ss.* 242, 432—*Appeal—Fresh Evidence—Costs.*—An error of judgment by the master of a vessel at a moment of great difficulty does not amount to a wrongful act or default within sec. 242 of Merchant Shipping Act, 1854. On a shipping casualty appeal, application should be made to the Court of Appeal prior to the hearing for leave to adduce fresh evidence, if it is desired to do so. On a successful appeal, the Board of Trade having appeared in support of the decision appealed from, was ordered to pay the costs of appeal.—*The Famenoth*, L.R. 7 P.D. 207.

Solicitor :—

(iii.) **Q. B. Div.**—*Suit for Judicial Separation—Compromise—Wife's Costs.*—The costs of a solicitor employed by a married woman to institute proceedings against her husband for a judicial separation can only be recovered against the husband when the necessity for such proceedings has been made out in point of fact.—*Taylor* v. *Hailstone*, 47 L.T. 440.

Trade Mark :—

(iv.) **Ch. Div. V. C. B.**—*Infringement — Registration — Combination of Letters.*—Combinations of letters may constitute a valid trade mark notwithstanding that they indicate the quality and pattern of the goods to which they are applied, if they also indicate that the goods have been manufactured by a particular person or firm.—*Ransome* v. *Graham*, 51 L.J. Ch. 897; 47 L.T. 218.

Trustee :—

(v.) **C. A.**—*Discretionary Power—Control of Court.*—Where absolute discretion has been given to trustees as to the exercise of a power, the Court will not compel them to exercise it, but if they propose to exercise it, the Court will see that they do not do so improperly.—*Tempest* v. *Lord Camoys*, L.R. 21 Ch. D. 571; 51 L.J. Ch. 785.

(vi.) **C. A.**—*Lunatic Trustee—Vesting Order*—13 & 14 *Vict.*, *c.* 60, *s.* 5.—Where one of four trustees of stock became lunatic, and there was no difficulty in finding a new trustee to be appointed in his place, the Court refused to make an order vesting the right to transfer the stock in the three remaining trustees, and ordered a new trustee to be appointed in the place of the lunatic.—*Re Ray*, 47 L.T. 500.

(vii.) **Ch. Div. C. J.**—*Power to grant Lease—Equitable Execution by Tenant for Life—Infant Tenant in Tail.*—A tenant for life entered into a binding agreement for a building lease under a power, and then died, leaving an infant tenant in tail, during whose minority the trustees had a power of leasing: *Held* that the trustees had power to grant a lease in accordance with the agreement.—*Davis* v. *Harford*, L.R. 22 Ch. D. 128; 47 L.T. 540; 31 W.R. 61.

(i.) **Ch. Div. K. J.**—*Power to Invest in Realty—Money Advanced by Trustee to Complete Purchase.*—Trustees under a settlement having power to invest in realty with the consent of the tenant for life, purchased real estate with such consent, the price of which exceeded the amount of the trust fund; and one of the trustees advanced the amount required to make up the purchase-money. He subsequently died: *Held* that the trust estate had a first charge on the property bought for the amount of the trust fund, and subject thereto the trustee's estate had a right to be indemnified for the amount advanced by him, and to enforce that right by sale of the property.—*Worcester City & County Banking Co.* v. *Black*, 31 W.R. 195.

Vendor and Purchaser :—

(ii.) **Ch. Div. F. J.**—*Conditions of Sale—Commencement of Title—Misleading Condition.*—Vendors stipulated that the title to property should commence with an indenture dated 18th Oct., 1845, and made between G. of the one part and C. and H. of the other part, and that the earlier title should not be investigated or objected to. It appeared that the conveyance of 18th Oct., 1845, was in part a settlement and in part a voluntary conveyance on trust for sale, with a power of revocation reserved to the grantor: *Held* that the condition was misleading and that the vendors could not insist on completion without giving a forty years' title.—*Marsh* v. *Earl Granville*, 47 L.T. 471; 31 W.R. 239.

(iii.) **Ch. Div. F. J.**—*Right to Rescind—Defective Title.*—A vendor contracted to sell an agreement for a lease, and afterwards the purchaser repudiated the contract. At the date of the contract and of the repudiation, the agreement was voidable at the will of a third party, who was willing to confirm it on certain conditions: *Held* that the contract could not be enforced.—*Brewer* v. *Broadwood*, L.R. 22 Ch. D. 105; 47 L.T. 508; 31 W.R. 115.

(iv.) **C. A.**—*Right to Rescind Marketable Title—Purchaser's Knowledge of Defect.*—Defendant agreed to sell to plaintiff certain property, and to make a good marketable title. On investigation, it appeared that the property was subject to certain stringent restrictive covenants, which made the title not a marketable one; and plaintiff brought an action to recover his deposit. It was proved that plaintiff knew of the restrictive covenants at the time of the contract: *Held* that plaintiff was entitled to recover.—*Cato* v. *Thompson*, L.R. 9 Q.B.D. 616; 47 L.T. 491.

(v.) **C. A.**—*Sale by Court—Restrictive Covenant.*—In a sale by the Court, one of the conditions provided that the conveyances should contain covenants by the purchasers for securing the liabilities and rights under certain reservations and stipulations as to the property, the form of such covenants, in case of dispute, to be settled by the Judge. A dispute having arisen concerning the form of the covenant, the Judge settled the covenant, adding a proviso that if the purchaser assigned his purchase, and the assignee entered into a similar covenant, the purchaser should be freed from further liability. *Held* that this proviso must be struck out.—*Pollock* v. *Rabbits*, L.R 21 Ch. D. 466; 31 W.R. 150.

Voluntary Gift :—

(vi.) **Ch. Div. K. J.**—*Policy of Insurance effected in Daughter's Name—Retention of Policy.*—R. effected an insurance on his own life in his daughter's name, and paid the premiums himself: *Held* a complete gift to the daughter, though he retained the policy in his own possession. —*Weston* v. *Richardson*, 47 L.T. 514.

Water:—

(i.) **C. A.**—*Waterworks Company—Rate.*—Decision of Q. B. Div. (see. iv., p. 17) reversed.—*Dobbs* v. *Grand Junction Waterworks Co.*, 47 L.T. 504.

Will:—

(ii.) **Ch. Div. V. C. B.**—*Charity—Mortmain—Bonds secured on Parish Rates—9 Geo. II.*, c. 36.—Bonds created under a private Act were secured on the rates payable by occupiers or owners of all tenements and hereditaments within the limits of the Act. To enforce payment of the rates a power of distress was given, leviable on the goods and chattels of the owners and occupiers: *Held* that these bonds did not give the owner an interest affecting lands, tenements, or hereditaments within the meaning of the Mortmain Act.—*Jervis* v. *Lawrence*, 47 L.T. 428.

(iii.) **C. A.**—*Construction—Annuity without any Deduction—Income Tax.*—Decision of V. C. B. (see vi., p. 17) reversed on the ground that the matter was *res judicata*, an order having been made in 1861 directing the payment of the annuity until the further order of the Court, free of all deductions except income-tax.—*Peareth* v. *Marriott*, 31 W.R. 68.

(iv.) **Ch. Div. K. J.**—*Construction—Executory Devise—Rule in Wild's Case.*—Devise to R. and J. as tenants in common, "and in their respective proportions to their children, or according to their wills." *Held* a gift in fee simple to R. and J. as tenants in common, with a superadded executory devise at the death of each to his children or devisees. —*Re Buckmaster's Estate*, 47 L.T. 514.

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Law Reports, Law Journal Reports, Law Times Reports, and Weekly Reporter,

FOR FEBRUARY, MARCH, AND APRIL, 1883.*

By HENRY M. KEARY, of Lincoln's Inn, Barrister-at-Law.

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(vii.) C. A.—*Liquidation—No Resolutions—Power to Adjudicate Bankrupt—Bankruptcy Act*, 1869, *ss.* 125, 126.—The Court has power, under secs. 125, 126 of Bankruptcy Act, to adjudicate a debtor, who has presented a liquidation petition, a bankrupt, though no resolutions for liquidation or composition have been passed.—*Ex parte Walker, Re McHenry*, 48 L.T. 291; 31 W.R. 119.

(viii.) C. A.—*Liquidation—Receiver and Manager—Taxation of Charges—Payment for Goods Ordered by—Bankruptcy Rules*, 1871, *r.* 5.—After the trustee in a liquidation by a trader had been appointed, F., who had previously been appointed receiver and manager, claimed payment of two sums, one in respect of expenses incurred by himself and two persons employed by him in the management of the debtor's business, and the other in respect of goods purchased by him on credit for car-

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(v.) **P. C.**—*Law of Queensland—Legislative Assembly—Disqualification—31 Vict., No. 38, ss. 6, 7—Principal and Agent—Estoppel.*—M. & Co. were general agents to charter ships for a firm of shipowners of which defendant was a member, and they concluded a charter-party with the Local Government "for and on behalf of the owners" of one of the ships of the firm, but contrary to the express direction of defendant: *Held*, that this did not render defendant disqualified from sitting in the Legislative Assembly under the provisions of Queensland Constitutional Act of 1867.—*Miles* v. *McIlwraith*, L.R. 8 App. 120.

(vi.) **P. C.**—*Law of Victoria—Probate Duty—Victorian Act, No. 388 of 1870, s. 2 (7).*—A legal personal representative in Victoria should, as regards the personal estate of deceased mentioned in sec. 2, sub-sec. 7 of Act No. 388 of 1870, state accounts only of so much thereof as comes under his control by virtue of his Victorian probate.—*Blackwood* v. *The Queen*, L.R. 8 App. 82.

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(viii.) **C. A.**—*Articles—Power to Remove Directors.*—Shareholders in general meeting have no power to remove directors, unless such power is given by the articles of association.—*Imperial Hydropathic Hotel Co.* v. *Hampson*, 31 W.R. 330.

(i.) **C. A.**—*Cost-book Mine—Relinquishing Member.*—In the F. mine it appeared that on the retirement of members the accounts had, for many years, been taken on the footing of a division of the liabilities among all the shares, whether solvent or insolvent: *Held* that this custom was unreasonable, and that a relinquishing member must pay his share of liabilities according to the general custom in cost-book mines. The company became insolvent after the date of the relinquishment: *Held* that the machinery and plant of the company must be valued as a going concern at the date of relinquishment.—*Re Frank Mills Mining Co.*, 48 L.T. 260; 31 W.R. 440.

(ii.) **Ch. Div. F. J.**—*General Meeting—Demand of Poll—Special Resolution—Companies Act*, 1862, *s.* 51.—Five members agreed to demand a poll in order to pass a resolution for the voluntary winding-up of a company, and before the general meeting informed the chairman of such agreement; and after an amendment against the resolution was carried the chairman said, "A poll is demanded:" *Held* that a valid demand for a poll had been made.—*Re Phœnix Electric Light and Power Co.*, 48 L.T. 260; 31 W.R. 398.

(iii.) **Ch. Div. F. J.**—*Pledge of Shares—Execution of Blank Transfer—Implied Power of Sale.*—Plaintiff had shares in a company, whose articles provided that all transfers of shares should be subject to the approval of the directors, and he deposited his shares and a transfer thereof which he had executed in blank, with a stockbroker to secure an advance; and the stockbroker handed the shares and transfer to Q., to secure a previous advance of a larger amount. The stockbroker having died insolvent, Q. filled up the transfer with his own name, and applied to the directors to register it; and plaintiff, on learning this, gave notice to the company that he claimed the shares: *Held* that Q., having received notice of plaintiff's claim before his legal title to the shares was complete, could only hold them as security for the amount for which they were pledged by plaintiff.—*France* v. *Clark*, 48 L.T. 185; 31 W.R. 374.

(iv.) **Ch. Div. F. J.**—*Rectification of Register—False Statement in Prospectus—Evidence of.*—Where a shareholder in a company applies to have his name removed from the list of shareholders on the grounds of false statements in the prospectus, a passage in the speech of the chairman at a statutory meeting of the company is not evidence of the alleged false statements.—*Ex parte Abbott, Re Devala Gold Mining Co.*, L.R. 22 Ch. D. 593; 48 L.T. 259; 31 W.R. 425.

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(vi.) **Ch. Div. K. J.**—*Winding-up—Agreement for Sale of Company's Mine—Providing Funds for Litigation—Maintenance and Champerty—Companies Act*, 1862, *ss.* 95, 161.—A company which was being wound-up under supervision, in order to procure money to bring an action against F. to rescind a contract for purchase of the company's mine and recover the purchase-money, made an agreement with a new company formed for the purpose, whereby they assigned to the new company their mine, and the new company was to provide money for the litigation and also for preventing deterioration by working the mine. There was also a clause empowering the liquidator to re-purchase the mine: *Held* that

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(i.) **Ch. Div. K. J.** -*Winding-up—Contributory—Director—Qualification*—Where the articles of a company provide that the qualification of a director shall be the holding of fifty shares, but that this shall not invalidate any acts of directors prior to their being so qualified, a man does not become a shareholder or liable as a contributory in respect of fifty shares merely by accepting the office of director and acting as such at two meetings.—*Brett's Case, Re Columbia Chemical Factory*, 47 L.T. 571.

(ii.) **Ch. Div. P. J.**- *Winding-up—Defaulting Liquidator—Surety—Re-opening Accounts.*—Where a liquidator in the winding-up of a company became bankrupt, and the accounts against him were carried in and vouched without any notice to his surety; the Court allowed the accounts to be re-opened on the summons of the surety, on his paying into Court the amount for which he was found liable and £100 to meet costs, and undertaking to pay interest from the date of the order, on the sum which should eventually be found due, if required to do so.—*Re Birmingham Brewing Co.*, 31 W.R. 415.

(iii.) **Ch. Div. F. J.**- *Winding-up—Distress for Rent—Collateral Security—Companies Act*, 1862, s. 163. If a company be underlessees, the landlord will be allowed to distrain for rent, though he hold a collateral security from the company for such rent, on which he would be entitled to prove in the winding-up.—*Ex parte Clemence, Re Carriage Co-operative Supply Association*, 48 L.T. 308; 31 W.R. 397.

(iv.) **C. A.**—*Winding-up—Liquidator—Appointment of.*—A judge cannot delegate the nomination of an official liquidator.—*Re Great Southern Mysore Gold Mining Co.*, 48 L.T. 11.

(v.) **Ch. Div. F. J.**—*Winding-up—Resolution for Voluntary Winding-up—Companies Act*, 1862, *ss.* 145, 147. - When, after presentation of a winding-up petition but before the hearing, the shareholders of a company resolve on a voluntary winding-up, the Court is not bound to make a compulsory order, but may continue the voluntary winding-up under supervision. -*Re Simon's Reef Gold Mining Co.*, 31 W.R. 238.

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(vii.) **Q. B. Div.**—*Action to Assess Amount of Fine* The lord of a manor, who was admittedly entitled by custom to a fine amounting to three years' improved annual value of the hereditaments upon the admittance of two joint lives, brought an action for a fixed sum of money which he alleged to be assessed on this principle, and claimed, if necessary, an inquiry as to the improved annual value: *Held* that there was nothing to prevent him bringing the action and recovering the fine to which he was reasonably entitled on the admitted principle.—*Fraser* v. *Mason*, 48 L.T. 269.

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(i.) **Ch. Div. V. C. B.**—*Registration—Name of Publisher—Objections—5 & 6 Vict., c.* 45.—In registering the copyright of a book the name of the first publisher must be given under the heading "Name of publisher and place of publication." Where the registration is defective, it is of no consequence that the defendant's objections to title in an action for infringement have been delivered too late, as plaintiff is precluded from suing by the statute.—*Coote* v. *Judd*, 48 L.T. 205; 31 W.R. 425.

County Court:—

(ii.) **C. A.**—*Practice—Defendant's Right to sum up Evidence.*—At the trial of an action in a county court the defendant has no right to sum up his evidence. *Dymock* v. *Watkins*, 31 W.R. 331.

Crimes and Offences:—

(iii.) **Q. B. Div.**—*Adulteration of Food—Diluted Spirits—Notice—38 & 39 Vict., c. 63, ss. 6, 8; 42 & 43 Vict., c. 30, s. 6.*—The vendor of spirits diluted to below the amount under proof allowed by the Sale of Food and Drugs Act Amendment Act, 1879, s. 6, is not precluded from any defence open to him under sec. 6 of the Act of 1875; and may show that the purchaser had notice, by a printed notice drawn to his attention, that the spirits sold were diluted.—*Gage* v. *Elsey*, 52 L.J. M.C. 44; 48 L.T. 226; 31 W.R. 500.

(iv.) **C. C. R.**—*Attempt to Commit Murder—Attempt to Shoot with Intent—24 & 25 Vict., c. 100, ss. 14, 15.*—Prisoner drew from his pocket a loaded pistol with intent to commit murder, and was prevented from firing only by its being immediately taken from him: *Held* that he could not be convicted under sec. 15 of 24 & 25 Vict., c. 100, though the judge at the trial had held that he could not be convicted under sec. 14.—*Regina* v. *Brown*, 48 L.T. 270; 31 W.R. 460.

(v.) **Q. B. Div.**—*Child living in a House frequented by Prostitutes—Industrial Schools Acts—29 & 30 Vict., c. 118, s. 14; 43 & 44 Vict., c. 15, s. 1.*—If it can be proved that a child under fourteen, brought before a magistrate under the Industrial Schools Acts, 1866 and 1880, is living in a house frequented by prostitutes for the purposes of prostitution, the magistrate is bound to make an order for his or her removal to an industrial school, though the child be living with its mother, who is not a prostitute.—*Hiscocks* v. *Jermonson*, 52 L.J. M.C. 42; 48 L.T. 225.

(vi.) **Q. B. Div.**—*Elementary Education—Attendance Order—39 & 40 Vict., c. 79, ss. 5, 11.*—Sec. 11, sub-sec. 1 of Elementary Education Act, 1876, applies to children prohibited from being taken into employment by sec. 5.—*Wingard* v. *Toogood*, L.R. 10 Q.B.D. 218; 52 L.J. M.C. 25; 48 L.T. 229; 31 W.R. 271.

(vii) **Q. B. Div.**—*Extradition—Foreign Warrant—Warrant of Committal—Description of Offence—33 & 34 Vict., c. 52, s. 10.*—A French subject was apprehended in England upon a warrant issued by the chief metropolitan police magistrate, and committed under sec. 10 of Extradition Act, 1870. In the foreign warrant issued in France the prisoner was accused of *abus de confiance*, and in the police magistrate's warrant the offence was described as "fraud by an agent." *Held* that the description of the offence in the warrant was sufficient.—*Ex parte Piot*, 48 L.T. 120.

(i.) **C. C. R.**—*False Pretences—Previous Conviction—Sentence.*—Prisoner was convicted on an indictment for obtaining goods by false pretences, and also pleaded guilty to a previous conviction for false pretences charged on the indictment; and was sentenced to seven years' penal servitude: *Held* that the sentence was wrong, and must be reduced to five years.—*Regina* v. *Horn*, 48 L.T. 272.

Debtor and Creditor:—

(ii.) **Q. B. Div.**—*Attachment of Debt—Attachable Interest—Equity of Redemption—Ord.* 45, r. 2.—A judgment debtor was entitled under a will to an annual income for life, payable by trustees half yearly; and he assigned his interest by mortgage to secure a sum borrowed by him. The trustees had advanced to the debtor more than the payment due at the next half year. No receiver was appointed: *Held* that the debtor's interest was not attachable under Ord. 45, r. 2.—*Webb* v. *Stenton*, 48 L.T. 268.

Easement:—

(iii.) **C. A.**—*Fascia—Unity of Ownership—Division of Tenements.*—Plaintiff was lessee of No. 2 in a street, the successive occupiers of which premises had since 1852, painted their names on a fascia, part of which extended over No. 3, belonging to the same landlord: *Held*, on the evidence, that the fascia formed part of plaintiff's tenement, and was not included in the lease of No. 3.—*Francis* v. *Hayward*, L.R. 22 Ch. D. 177; 52 L.J. Ch. 291; 48 L.T. 297; 31 W.R. 488.

Ecclesiastical Law:—

(iv.) **C. A.** *Deprivation—Prohibition—Interlocutory Decree—Royal Palace—3 & 4 Vict., c. 86.*—Decision of Chitty, J. (see iv., p. 30) affirmed.—*Combe* v. *De la Bere*, 48 L.T. 298; 31 W.R. 258.

Election:—

(v.) **Q. B. Div.**—*Municipal Election—Nomination Paper—38 & 39 Vict., c.* 40, s. 1 (2).—A burgess subscribing a nomination paper at a municipal election must set out correctly the situation of the property in respect of which he is enrolled on the burgess roll, in accordance with the directions in the note to the form of nomination paper in sch. 1 of Municipal Election Act, 1875.—*Henry* v. *Armitage*, 52 L.J. Q.B. 165; 31 W.R. 244.

(vi.) **Q. B. Div.**—*Municipal Election—Petition—Corrupt Practices—Time for Delivery of Particulars—35 & 36 Vict., c.* 60.—In a municipal election petition the respondent applied for an order for delivery of particulars of alleged corrupt practices: *Held*, that in the absence of special circumstances, the particulars would not be ordered to be delivered earlier than seven clear days before the hearing of the petition.—*Lenham* v. *Barber*, L.R. 10 Q.B.D. 293; 31 W.R. 428.

(vii.) **Q. B. Div.**—*Parliament—Borough Vote—Registration—Amendment of Description—41 & 42 Vict., c.* 26, s. 28 (12). The revising barrister may amend the description of the nature of the qualification for a parliamentary vote in a borough by changing "house," in the occupier's list, into "dwelling-house," when it is proved that the property is below £100 yearly value, but has been occupied by claimant as a dwelling-house during the qualifying year.—*Friend* v. *Towers*, L.R. 10 Q.B.D. 87; 52 L.J. Q.B. 109; 31 W.R. 247.

(i.) **C. A.**—*Parliament—Borough Vote—Lodger or Householder*—30 & 31 *Vict.*, c. 102, *ss.* 3, 4; 41 & 42 *Vict.*, c. 26, *s.* 5.—A tenant of part of a house wholly let out in tenements does not lose his qualification for a vote by reason only that during the qualifying year the tenant of another part of the house gave up his tenancy to the landlord, and that part remained unlet.—*Ancketill* v. *Baylis*, 52 L.J. Q.B. 104; 48 L.T. 342; 31 W.R. 233.

(ii.) **Q. B. Div.**—*Parliament—Election Petition—Inspection and Discovery*—31 & 32 *Vict.*, c. 125, *ss.* 2, 26—*Rules M. Term*, 1868, r. 44.—In a parliamentary election petition the Court or a judge at chambers has no jurisdiction to make orders against the sitting member for inspection and discovery of documents.—*Moore* v. *Kennard*, L.R. 10 Q.B.D. 290; 48 L.T. 236.

Fishery:—

(iii.) **Q. B. Div.**—*License—Tributary—Reservoir fed by Stream*—36 & 37 *Vict.*, c. 71, *s.* 22.—A reservoir of a water company supplied by a tributary stream, and discharging its surplus water into the old course of the stream, is not a tributary within the meaning of the Salmon Fishery Acts.—*Harbottle* v. *Terry*, L.R. 10 Q.B.D. 131; 52 L.J. M.C. 31; 48 L.T. 219; 31 W.R. 289.

Highway:—

(iv.) **Q. B. Div.**—*Repair—Dangerous Projection—Cover of Water Valve—Highway and Water Authority.*—A local board as water authority fixed in the highway a pipe with an iron valve-cover at the top. This was originally level with the roadway, but in consequence of the road wearing away it projected above it, and a horse stumbled against it and was injured: *Held* that the local board, which was also the highway authority, was liable for the injury.—*Kent* v. *Worthing Local Board*, L.R. 10 Q.B.D. 118; 52 L.J. Q.B. 77; 48 L.T. 362.

Husband and Wife:—

(v.) **Q. B. Div.**—*Conveyance of Wife's Property—Dispensing with Husband's Concurrence* 3 & 4 *Will. IV.*, c. 74, *s.* 91.—Where a husband and wife were living apart, and the wife, being devisee of real estate on trust for sale, the husband refused to concur in a conveyance on a sale under the trusts of the will unless he received a sum of money for doing so, the Court granted an order dispensing with his concurrence under 3 & 4 Will. IV, c. 74, s. 91, though he had to a slight extent contributed to his wife's support.—*Re Caine*, L.R. 10 Q.B.D. 284; 48 L.T. 357; 31 W.R. 428.

(vi.) **Ch. Div. C. J.**—*Covenant to settle after-acquired Property—Gift to Wife for Separate Use.*—By their marriage settlement, a husband and wife covenanted with the trustees to settle all property to which the wife, during the coverture, or her husband in her right, should become entitled, for any estate or interest whatsoever. During the coverture the wife's father died, having bequeathed to her property for her separate use independently of any husband: *Held* that this property was bound by the covenant.—*Pott* v. *Brassey*, L.R. 22 Ch.D. 275; 48 L.T. 155; 31 W.R. 469.

(vii.) **Ch. Div., Pollock, B.**—*Covenant to settle after-acquired Property—Gift to Wife for Separate Use.* On the marriage of S with his wife, the wife's father covenanted by deed to pay an annuity to trustees on trust for the husband and wife during their joint lives in moieties, the wife's moiety for her separate use, with restraint on anticipation; and by another deed the husband and wife covenanted that property coming to the wife during coverture should be settled on trust for the husband and

wife during their joint lives in moieties, the wife's moiety for her separate use, with restraint on anticipation. Subsequently S., for value received from the wife's father, assigned his interest in the annuity to the trustees of the settlement on trust for his wife for her separate use for life, and after her decease on the trusts of the settlement: *Held* that the wife was restrained from anticipation of her interest under this assignment.—*Scholfield* v. *Spooner*, 48 L.T. 159.

(i.) **Ch. Div. K. J.**—*Covenant to settle after-acquired Property—Married Woman Infant—Election.*—By a settlement on the marriage of an infant, she purported to assign to trustees all property derived by her under her father's marriage settlement, and the husband covenanted to bring into settlement all after-acquired property. At the date of the settlement the wife was entitled to a contingent reversionary interest under her father's marriage settlement, which did not come within 20 & 21 Vict., c. 57, and was, therefore, not assignable by her. On coming of age, she executed an acknowledged deed, purporting to assign to the trustees all property by the settlement expressed to be assigned. Subsequently part of the reversionary interest fell into possession, and was invested by husband and wife in the trustees' names. The husband died, and the wife became of unsound mind: *Held*, that she had effectually elected to confirm the settlement.—*Wilder* v. *Pigott*, L.R. 22 Ch.D. 263; 52 L.J. Ch. 141; 48 L.T. 112; 31 W.R. 377.

(ii.) **P. D. A. Div.**—*Divorce—Application to shorten time for making Decree Absolute—23 & 24 Vict., c. 144, s. 7—29 Vict., c. 32, s. 3.* In the absence of special circumstances the Court will not shorten the interval between the decree *nisi* and the decree absolute.—*Rippingall* v. *Rippingall*, 48 L.T. 126.

(iii.) **P. D. A. Div.**—*Divorce—Desertion—Condonation—Revival.*—A husband having been guilty of desertion and adultery, the wife forgave him and they returned to cohabitation. He subsequently committed adultery: *Held* that the subsequent adultery revived the desertion.—*Blandford* v. *Blandford*, L.R. 8 P.D. 19; 52 L.J. P.D.A. 17: 48 L.T. 238; 31 W.R. 508.

(iv.) **C. A.**—*Divorce—Judicial Separation—Unreasonable Delay—20 & 21 Vict., c. 85, s. 31.*—Decision of Hannen, P. (see ii., p. 8) reversed.—*Mason* v. *Mason*, 48 L.T. 290; 31 W.R. 361.

(v.) **H. L.**—*Divorce in Scotland—Marriage in England.*—A domiciled Scotchman married an Englishwoman in England, and they then went to reside in Scotland. Two years afterwards the wife obtained a divorce in Scotland *à vinculo matrimonii*, on the ground of the husband's adultery only: *Held* that the divorce was a sentence of a court of competent jurisdiction, and entitled to recognition in the courts of this country.—*Harvey* v. *Farnie*, L.R. 8 App. 43; 48 L.T. 273; 31 W.R. 433.

(vi.) **Ch. Div., Pollock, B.**—*Separate Estate—Restraint on Anticipation—Compromise of Action—Sanction of Court—44 & 45 Vict., c. 41, s. 39.*—An action having been brought by the executors of M., who had by deed granted an annuity to H., a married woman, for her separate use, without power of anticipation, against H and her husband, claiming that the deed did not bind M.'s estate, the Court, under sec. 39 of Conveyancing Act, 1881, sanctioned a compromise, by which it was arranged that a lump sum should be paid in lieu of the annuity; but directed that H. should give her consent on her separate examination before the judge.—*Musgrave* v. *Sandeman*, 48 L.T. 215.

(i.) **Ch. Div., V. C. B.**—*Separate Estate—Restraint on Anticipation—Costs Charged on*—44 *&* 45 *Vict.*, *c.* 41, *s.* 39.—A married woman having a life interest with a restraint on anticipation, brought an action for rectification of a deed on the ground of mistake, and undertook to pay the costs of all parties. The Court, with her consent, made an order under sec. 39 of Conveyancing Act, 1881, charging the costs on her life interest.—*Sedgwick* v. *Thomas*, 48 L.T. 100.

Infant:—

(ii.) **C. A.**—*Custody of—Illegitimate Infant.*—Where an illegitimate child seven years old had been since its birth in the care of foster-parents in poor circumstances, and the mother was the mistress of a man not the father of the child, the custody of the child was, upon the mother's application, given to a sister and brother-in-law of the mother.—*Regina* v. *Nash, Re Carey*, 31 W.R. 420.

(iii) **Ch. Div. F. J.**—*Defeasible Gift to—Accumulation of Income*—23 *&* 24 *Vict.*, *c.* 145, *s.* 26.—Property was bequeathed to trustees in trust for an infant, with a gift over in case of death under twenty-one. The infant died under twenty-one. *Held* that the accumulations of income to the time of his death belonged to the infant, and that sec. 26 of Lord Cranworth's Act did not apply. *Re Buckley's Trusts*, L.R. 22 Ch.D. 583; 48 L.T. 109; 31 W.R. 376.

(iv.) **Ch. Div. P. J.**—*Tenant-in-Tail—Proceedings for Protection of Estate—Costs.*—An action of ejectment was brought, with the sanction of the Court, in the name of an infant tenant-in-tail of settled property, by his guardian as next friend, for the protection of his estate: *Held* that the Court could give leave to raise a sum sufficient to meet the costs of the action by equitable mortgage by deposit of the title deeds.—*Re Jones*, 48 L.T. 188; 31 W.R. 399.

Injunction:—

(v.) **Ch. Div. F. J.**—*Breach of Contract—Negative Stipulation.*—Whether an injunction will be granted against the breach of a contract of which the Court would not decree specific performance, depends on the presence of a negative stipulation in the contract, prohibiting acts in contravention of the affirmative part.—*Donnell* v. *Bennett*, 48 L.T. 68; 31 W.R. 316.

Landlord and Tenant:—

(vi.) **C. A.**—*Agricultural Holding—Out-Going Tenant's Valuation—Tenant for Life.*—An owner in fee simple demised a farm for seven years and died before the expiration of the term, having devised all his realty to trustees for 1,000 years to raise money in aid of his personal estate, and subject thereto to plaintiff for life. The term of 1,000 years was mortgaged for £20,000. On the expiration of the seven years the tenant gave up the farm and no new tenant could be found: *Held*, that plaintiff, and not the testator's estate, was liable to pay the out-going tenant's valuation.—*Mansel* v. *Norton*, 31 W.R. 325.

(vii.) **Ch. Div. P. J.**—*Lease—Covenant to Renew—Conditions Precedent.*—A lease for twenty-one years contained a covenant by the lessors that they would, before the expiration of the term, whenever thereunto required by the lessees, and on receiving from them a fine of £1,000, grant a new lease, the lessees paying to the lessors on the execution thereof a fine of £1,000: *Held* that the payment of the fine and execution of the new lease before the expiration of the term were not conditions

attornment clause in his mortgage deed will not render the first mortgagee liable to account on the footing of mortgagee in possession in respect of the rent thereby reserved.—*Stanley* v. *Grundy*, L.R. 22 Ch. D. 478; 52 L.J. Ch. 248; 48 L.T. 106; 31 W.R. 315.

(i.) **Ch. Div. P. J.**—*Foreclosure—Bankrupt Mortgagor—Disclaimer.*—In a foreclosure action against a bankrupt mortgagor and his trustee in bankruptcy, where the trustee has disclaimed and neither defendant appears, the mortgagee is entitled at the hearing to a foreclosure absolute against the trustee, and an ordinary foreclosure decree against the bankrupt.—*English* v. *Barlow*, 48 L.T. 188.

(ii.) **Ch. Div. F. J.**—*Foreclosure · Order for Sale—44 & 45 Vict., c. 41, s. 25.*—Where, at the trial of a foreclosure action, plaintiff asks for a sale, and the mortgagor does not appear, the Court will order an account of what is due to plaintiff, and then that so much of the property be sold as will be sufficient to satisfy what is found due. —*Wade* v. *Wilson*, L.R. 22 Ch.D. 235; 47 L.T. 696; 31 W.R 237.

(iii.) **Ch. Div. F. J.**—*Foreclosure Right of Mortgagee to Deeds.* A first mortgagee who forecloses cannot claim from a puisne mortgagee deeds which affect only the equity of redemption.—*Greene* v. *Foster*, L.R. 22 Ch.D. 566; 31 W.R. 285.

(iv.) **C. A.**—*Power of Sale—Improper Sale.*— E. acted as solicitor for both parties in the mortgage of a reversionary interest, and inserted in the deed a power of sale exercisable without notice on default of payment of interest for a month. The interest being in arrear, E., without notice to the mortgagor, sold the property. At the time of sale the life tenant was in very delicate health and died before the sale was completed · *Held* that the fact that the sale was at a considerable under-value afforded no ground for setting it aside.—*Bettyes* v. *Maynard*, 31 W.R. 461.

(v.) **Ch. Div. C. J.**—*Priority—Deed not Registered in Middlesex—Married Woman—Charge on Separate Estate*—A married woman entitled equitably for life for her separate use to land in Middlesex, charged her separate estate by a deed dated 29th May, 1880, with payment of a debt due from her husband. The property had been mortgaged by a deed dated 8th April, 1880, which had not been registered. A receiver was obtained by plaintiffs, who were the mortgagees under the deed of May: *Held* that the deed of April was entitled to priority, as that of May only operated upon what the married woman could honestly charge.—*Punchard* v. *Tomkins*, 31 W.R. 286.

(vi.) **Ch. Div. V. C. B.**—*Repayment by Instalments—Commission Payable in Default.*—By a mortgage deed it was agreed to repay the loan by instalments, and on default of payment to pay a commission of one per cent. for every month from the due date to the date of payment of such instalment: *Held* that the commission was not in the nature of a penalty.—*General Credit Co.* v. *Clegg*, L.R. 22 Ch. D. 549; 48 L.T. 182; 31 W.R. 421.

(vii.) **C. A.**—*Repayment by Instalments—Proof in Bankruptcy.*—A mortgage to a building society provided that the loan should be repaid by instalments, such instalments to be appropriated first in payment of interest, and secondly of principal. On default of payment for three months the whole of the amount to become due and payable. The mortgagor became bankrupt, and was in default for more than three months: *Held* that such parts of the future instalments as consisted of interest were not provable in bankruptcy as a debt presently due.—*Ex parte Bath, re Phillips*, L R. 22 Ch.D. 450; 48 L.T. 293; 31 W.R. 281.

(i.) **Ch. Div. F. J.**—*Satisfaction—Legal Estate—Tenancy at Will.*—*3 & 4 Will. IV., c. 27, ss. 7, 25, 34.*—When the money due upon a mortgage has been paid to the mortgagee, but no reconveyance has been executed, the mortgagor becomes a tenant at will to the mortgagee, and the legal estate of the latter is extinguished by thirteen years' adverse possession by the mortgagor. Section 25 of 3 & 4 Will. IV., c. 27, does not apply to the relation between a mortgagee whose mortgage has been satisfied and a mortgagor.—*Sands to Thompson*, L.R. 22 Ch.D. 614; 48 L.T. 210; 31 W.R. 397.

Municipal Law:—

(ii.) **Ch. Div. P. J.**—*Local Authority—Purchase of Land by—Extinguishment of Easement—Artisans' Dwellings Improvement—38 & 39 Vict., c. 36, s. 20.*—The effect of sec. 20 of Artisans and Labourers' Dwellings Improvement Act, 1875 is that upon the purchase of land by a local authority for the purpose of carrying into effect a scheme under the Act, all easements affecting the land become extinguished, subject only to the condition that compensation is to be paid to persons injured in manner provided by the section.—*Swainston* v. *Finn and Metropolitan Board of Works*, 52 L.J. Ch. 235; 31 W.R. 498.

(iii.) **H. L.**—*Maintenance of Insane Prisoners—3 & 4 Vict., c. 54, s. 2; 40 & 41 Vict., c. 21*—The liability for the maintenance of insane prisoners, which by 3 & 4 Vict., c. 54, s. 2, is imposed upon the county in default of any ascertained place of settlement, is transferred to the Consolidated Fund by the Prisons Act, 1877.—*Mews* v. *The Queen*, 48 L.T. 1; 31 W.R. 385.

Parliament:—

(iv.) **Q. B. Div.**—*House of Commons—Power to Exclude Member Jurisdiction of Law Courts.*—To a claim for damages for an assault committed on plaintiff, a Member of Parliament, whilst attempting to enter the House of Commons, defendant pleaded that the House had previously ordered that defendant should remove the plaintiff from the House until he should engage not further to disturb the proceedings of the House, and that, acting in pursuance of such order, he removed the plaintiff: *Held*, on demurrer, a good defence. *Bradlaugh* v. *Erskine*, 47 L.T. 618; 31 W.R. 365.

Partition:—

(v.) **Ch. Div. K. J.**—*Sale—31 & 32 Vict., c. 40, ss. 3, 5.*—In a partition action asking for a sale in lieu of partition, plaintiff should show in his statement of claim, under which section of the Act he wishes to proceed, and a sale will not be ordered under sec. 3 unless it is shown to be more beneficial.—*Evans* v. *Evans*, 31 W.R. 495.

Partnership:—

(vi.) **C. A.**—*Expulsion of Partner—Injunction from Soliciting Customers.*—A partner who has been expelled under a provision in the articles of partnership, and been repaid his share of the capital, will not be restrained from carrying on the business on his own account, and soliciting the old customers of the firm.—*Dawson* v. *Beeson*, L.R. 22 Ch.D. 504.

(vii.) **C. A.**—*Goodwill—Dissolution—Solicitors.*—A., B. and C. entered into partnership as solicitors in 1874, and in 1877 it was agreed that A. and B. should continue the partnership and that C. should become a clerk at a salary; six months afterwards C. died and his executrix brought an action for account against A. and B.: *Held* that she was not entitled to any allowance in respect of C.'s share in the goodwill of the business.—*Arundell* v. *Bell*, 31 W.R. 477.

Patent:—

(i.) **H. L.**—*Infringement—Transshipment of Pirated Article—Custom House Agents.*—Plaintiffs were patentees of an invention, an element of which was the rendering nitro-glycerine less liable to explode, so that it could be transported with safety? *Held* that the transshipping by defendants acting as custom house agents in an English port, of a similar preparation manufactured abroad, was not an exercise or user of the patent, and no action would lie against them for infringement.—*Nobel's Explosives Co.* v. *Jones, Scott & Co.*, L.R. 8 App. 5; 31 W.R. 388.

Poor Law:—

(ii.) **C. A.**—*Rate—Police-Station*—A house was hired for a police superintendent by the county authority, and the rent paid out of the public rates and deducted from his salary. He was compelled to live in the house so long as the county authority rented it, and was liable to be removed at any time: *Held* that he was rateable in respect of his occupation of the house.—*Martin* v. *West Derby Union*, 31 W.R. 489.

(iii.) **Q. B. Div.**—*Settlement—Illegitimate Child—Idiot over Sixteen 39 & 40 Vict., c.* 61, *s.* 34.—An adult illegitimate idiot who is incapable of taking care of herself acquires a settlement by residing for three years in a town with her mother.—*Salford Guardians* v. *Manchester Overseers*, L.R. 10 Q.B.D. 172; 52 L.J. M.C. 34; 48 L.T. 119; 31 W.R. 380.

Power of Appointment:—

(iv.) **Ch. Div. F. J.**—*Married Woman—General Power—Devise—Failure.*—A married woman devised property by virtue of a general power of appointment: *Held* that she had made the property her own, so that on the death of the devisee in her lifetime, the gift over on default of appointment did not take effect.—*Willoughby-Osborne* v. *Holyoake*, L.R. 22 Ch. D. 238; 48 L.T. 152; 31 W.R. 236.

(v.) **Ch. Div. K. J.**—*Successive Appointments—Insufficient Fund—Priority—Abatement.*—The donee of a power to appoint by will or deed a sum of £10,000 invested in mortgage made successive appointments by deed of different sums described as part of the £10,000, and by will confirmed these appointments and appointed the balance of the fund. The mortgage security proved insufficient to realise the £10,000: *Held* that the appointees took according to priority of appointment, and not rateable proportions of the fund.—*Gilbert* v. *Whitfield*, 52 L.J. Ch. 210.

Practice:—

(vi.) **C. A.**—*Appeal—Application for Bail—Criminal Matter—36 & 37 Vict., c.* 66, *s.* 47.—A refusal to admit to bail a person indicted for a misdemeanour is a judgment in a criminal matter within sec. 47 of Judicature Act, 1873, and therefore no appeal lies from such refusal.—*Regina* v. *Foote*, 31 W.R. 490.

(vii.) **C. A.**—*Appeal from Chambers.*—Where a case has been heard by a Judge in Chambers in the Chancery Division, the parties cannot appeal to the Court of Appeal without an argument before the judge in Court, unless the judge either certifies that he does not want to hear, or refuses to hear further argument.—*Manchester Val de Travers Paving Co.* v. *Slagg*, 47 L.T. 556.

(viii.) **Q. B. Div.**—*Appeal from Chambers—Refusal to Commit Debtor—Judicature Act*, 1873, *s.* 50.—A refusal by a Judge at Chambers to commit a defendant to prison for default in payment of a judgment debt is subject to appeal.—*Debenham* v. *Wardroper*, 48 L.T. 235.

(i.) **Q. B. Div.**—*Attachment of Debt—Charging Order—Power to Discharge—1 & 2 Vict., c.* 110, *ss* 14, 15.—An application under 1 & 2 Vict., c. 110, s. 15, that a charging order made under secs. 14 and 15 should be discharged, cannot be entertained after the order has been made absolute.—*Jeffryes* v. *Reynolds*, 52 L.J. Q.B. 55; 48 L.T. 358.

(ii.) **Ch. Div. V. C. B.**—*Concurrent Actions—Conduct of Proceedings.*—Where three actions had been brought for the administration of an estate, the Court ordered the actions to be consolidated and gave the conduct of the proceedings to the plaintiff in the second action, on the ground that he being the person who would ultimately have to bear the costs was most interested in keeping them down.—*Re Prime's Estate*, 48 L.T. 208.

(iii.) **C. A.**—*Costs—Action Against Corporation—Joinder of Individual Corporators as Defendants.*—Decision of Fry, J. (see ii., p. 12) affirmed.—*Attorney-General* v. *Bermondsey Vestry*, 31 W.R. 463.

(iv.) **C. A.**—*Costs—Appeal—Short-hand Notes—Rules of Court (Costs)*, 1875, *Ord.* 6, *Sch.*—When the costs of taking short-hand writer's notes of evidence are allowed they will include 3d. per folio for copies supplied for the use of counsel and of the judges, in addition to the printer's bill.—*Singer Manufacturing Co.* v. *Loog*, 52 L.J. Ch. 288; 31 W.R. 392.

(v.) **Q. B. Div.** *Costs—Counter Claim.*—Plaintiff claimed for £131 18s. for work and labour done, and defendant denied the claim except as to a small sum, and counter-claimed for £74 for damages for defective work. The issues were referred to an official referee, who found that plaintiff was entitled to £32 18s., and defendant to £34 10s. on the counter-claim: *Held*, that the proper judgment was for defendant for the balance of £1 12s., and the costs of the action.—*Lowe* v. *Holme*, L.R. 10 Q.B.D. 286; 31 W.R. 400.

(vi.) **C. A.**—*Costs—Interpleader—Appeal—Sheriff.*—In an interpleader action an order was made giving the sheriff his costs, and one of the parties appealed, and asked by his appeal to have the sheriff's costs paid by the other party, and served the sheriff with notice: *Held* that he ought not to have appeared on the appeal, and would not be allowed his costs of doing so. Costs of short-hand notes of evidence not used at the hearing of an appeal will not be allowed.—*Ex parte Webster, Re Morris*, L.R 22 Ch. D. 136; 31 W.R. 111.

(vii.) **Ch. Div. F. J.**—*Costs—Motion for Receiver—Administration Action—Executor de son Tort.*—A creditor bringing an administration action against an executor *de son tort*, who is appointed executor by the will, but declines to prove, is entitled to the costs of a motion for the appointment of a receiver pending the granting of probate.—*Foster* v. *Davis*, 31 W.R. 411.

(viii.) **Ch. Div. F. J.**—*Costs—Payment into Court—Acceptance in Satisfaction—Ord.* 30, *rr.* 1, 4—Ord. 30 applies only to an action which is strictly brought to recover a debt or damages and therefore the Court has a discretion as to costs in every other case, though plaintiff accepts in satisfaction of his cause of action a sum paid into Court by defendant.—*Nichols* v. *Evens*, L.R. 22 Ch. D. 611; 48 L.T. 66; 31 W.R. 412.

(ix.) **Ch. Div. F. J.**—*Costs—Taxation—Party and Party—6 & 7 Vict., c.* 73, *s.* 38.—A person liable to pay costs as between party and party is not entitled to a reference for taxation under the third party clause (sec. 38) of Attorneys Act, 1843.—*Re Cowdell*, 52 L.J. Ch. 246; 31 W.R. 335.

(i.) **Ch. Div. F. J.**—*Costs—Taxation—Reviewing—Rules of Court (Costs)*, 1875, *Ord.* 6, *rr.* 30 -33. A person who is not a party to the making of an order for taxation of costs, and who desires that the taxation may be reviewed, ought to apply to have the order for taxation set aside, and not move to review the certificate.—*Charlton* v. *Charlton*, 31 W.R. 237.

(ii.) **C. A.**—*Discovery—Affidavit of Documents—Ord.* 31, *r.* 12.—If it appears from an affidavit of documents or from the documents therein referred to, or from any admission in the pleadings by the party making the affidavit, that he has other documents besides those set out, which may reasonably be supposed to be material to the case of the party seeking discovery, a further affidavit will be required.—*Compagnie Financière et Commerciale du Pacifique* v. *Peruvian Guano Co.*, 52 L.J. Q B. 181; 48 L.T. 22; 31 W.R. 395.

(iii.) **Ch. Div. C. J.**—*Discovery—Affidavit of Documents—Recovery of Land—Ord.* 31, *rr.* 12, 13.—A plaintiff in an action for the recovery of land claiming by a purely legal title cannot obtain discovery from defendant unless before the Judicature Act, a bill for discovery in aid of the action could nave been sustained.—*Daniel* v. *Ford*, 47 L.T. 575.

(iv.) **Ch. Div. C. J.**—*Discovery—Affidavit of Documents—Reference—Ord.* 31, *r.* 12.—An order having been taken by consent referring an action and all matters in difference between the parties to an arbitrator, plaintiff took out a summons under Ord. 31, r. 12, for an affidavit of documents: *Held* that the Court had no jurisdiction to make an order. Liberty to apply is implied only in orders not of a final nature.—*Penrice* v. *Williams*, 31 W.R. 496.

(v.) **Ch. Div. C. J.**—*Discovery—Further Particulars—Patent Action*—15 & 16 *Vict.*, *c.* 83, *s.* 41.—After the close of the pleadings in an action to restrain infringement of a patent, plaintiff obtained leave from the district registrar to administer interrogatories asking the names and addresses of persons alleged to have used the invention at the places referred to in the particulars: *Held* that notwithstanding sec. 41 of Patent Law Amendment Act, 1852, the Court had jurisdiction to order the interrogatories to be answered.—*Birch* v. *Mather*, L.R. 22 Ch. D. 629; 52 L.J. Ch. 292; 31 W.R. 362.

(vi.) **C. A.**—*Discovery—Inspection of Documents—Reference to in Pleadings—Ord* 31, *rr.* 14, 17.—A defendant is entitled to inspection of documents referred to in plaintiff's statement of claim or affidavits before putting in his statement of defence.—*Quilter* v. *Heatley*, 31 W.R. 331.

(vii.) **Q. B. Div.**—*Discovery—Interrogatories—Action to Recover Penalty—Ord.* 31, *rr.* 1, 5.—The plaintiff in an action to recover statutory penalties cannot administer interrogatories to defendant.—*Hemmings* v. *Williamson*, 31 W.R. 336.

(viii.) **Ch. Div. K. J.**—*Discovery—Next Friend—Ord.* 31, *r.* 12.—Where it is sought to remove a person from being next friend of an infant in an action, he cannot be compelled, under Ord. 31, r. 12, to give discovery for that purpose.—*Lawton* v. *Elwes*, 31 W.R. 414.

(ix.) **Ch. Div. P. J.**—*Discovery—Production of Documents.*—The Court is not bound to order documents to be produced for inspection at the office of the town agent of the solicitor of the party on whom the order is made, but may in a proper case order production in some more convenient place.—*Prestney* v. *Mayor of Colchester*, 48 L.T. 353; 31 W.R. 414.

(x.) **C. A.**—*Discovery—Production of Documents—Possession of by Defendant and Another.*—Decision of Q. B. Div. (see iv., p. 40) affirmed.—*Kearsley* v. *Philips*, 31 W.R. 467.

(i.) **Ch. Div. F. J.**—*Discovery—Production of Documents—Privilege.*—In an action by *cestuis-que-trust* against their trustees for breach of trust: *Held* that the trustees must produce all letters and copies of letters from or to their solicitors in relation to matters in question in the action written *ante litem motam.*—*Mason* v. *Cattley*, L.R. 22 Ch. D. 609.

(ii.) **Ch. Div. V. C. B.**—*Discovery—Production of Documents—Privilege.*—A company defendants in an action refused to produce correspondence which had taken place between the officers of the company in consequence of a letter from the plaintiff which defendants regarded as a threat of litigation. The Court being of opinion that the letter did not amount to a threat: *Held* that the correspondence was not privileged.—*Westinghouse* v. *Midland Rail. Co.*, 48 L.T. 98.

(iii.) **C. A.**—*Double Litigation—Concurrent Actions in English and Foreign Courts.*—When two actions were pending in this country against the same defendants by different plaintiffs, and a third action in America by one of the English plaintiffs against the same defendants together with others, and the object and scope of the actions were not identical, though arising out of the same matter, the Court refused to interfere.—*McHenry* v. *Lewis*, L.R. 22 Ch. D. 397; 47 L.T. 549; 31 W.R. 305

(iv.) **C. A.**—*Double Litigation—Concurrent Actions in English and Foreign Courts.*—Though a plaintiff may be put to his election between two actions, where one is in an English court and the other abroad, on the ground of vexation, the Court will not consider the double litigation vexatious where there are substantial reasons to induce plaintiff to sue in both countries.—*Peruvian Guano Co* v. *Bockwoldt*, 48 L.T. 7.

(v.) **C. A.**—*Evidence after Decree—Right to Subpœna Witness*—15 & 16 *Vict.*, c. 86, ss. 40, 41—*Ord.* 37, r. 1.—Any party may, without the leave of the Court, issue a subpœna for the examination of a witness at any stage of the action.—*Raymond* v. *Tapson*, L R. 22 Ch D. 430; 31 W.R. 394.

(vi.) **Ch. Div. V. C. B.**—*Fieri Facias—Wrongful Seizure—Interpleader—Costs.*—The sheriff, under a *fi. fa.* against A., took possession of B.'s goods in A.'s house. B. gave formal notice to the sheriff before and after seizure that the goods were his, and three days afterwards issued a writ against the sheriff for an injunction and damages. The sheriff interpleaded, and subsequently B.'s title to the goods was established. The action against the sheriff having been brought to trial: *Held* that it must be dismissed without costs.—*Aylwin* v. *Evans*, 52 L.J. Ch. 105; 47 L.T. 568.

(vii.) **C. A.**—*Married Woman—Action by next Friend—Dismissal—Non-payment of Costs—Second Action.*—Where one action by a next friend on behalf of a married woman has been dismissed with costs for want of prosecution, a second action by a new next friend, with the same object, will be stayed until the costs of the first action have been paid.—*Randle* v. *Payne*, 48 L.T. 194; 31 W.R. 509.

(viii.) **Ch. Div. F. J.**—*Married Woman—Petition by*—45 & 46 *Vict*, c. 75, s. 1 (2).—Upon a petition for the appointment of new trustees of a property to which two married women were entitled, subject to a life interest, liberty was given to amend the title of the petition by striking out the names of their husbands as petitioners.—*Re Outwin*, 31 W.R. 374

(ix.) **P. D. A. Div.**—*Married Woman Plaintiff—Security for Costs*—45 & 46 *Vict. c.* 75.—Married women suing as plaintiffs without their husbands: *Held* not now liable to give security for costs.—*Threlfall* v. *Wilson*, L.R. 8 P.D. 18; 48 L.T. 238; 31 W.R. 508.

(i.) **C. A.**—*Notice of Motion—Short—Irregularity in.*—Where a party applies for special leave to serve short notice of motion he must distinctly state to the Court that the notice applied for is short, and the same fact must appear on the face of the notice served on the other party; but where short notice of motion has been irregularly applied for and served, but the party served has not been injured by the irregularity, the Court may disregard the irregularity.—*Dawson* v. *Beeson*, L.R. 22 Ch D. 504.

(ii.) **Ch. Div. C. J.**—*Payment out of Court—Petition—Adjournment into Chambers—10 & 11 Vict., c. 96, s. 2—15 & 16 Vict., c. 80, s. 27.*—A trust fund having been paid into Court under the Trustee Relief Act by trustees of a will, a petition was presented by parties interested for an inquiry and payment out to persons found entitled; and on the petition being heard the inquiry was directed and the further hearing adjourned into Chambers: *Held* that the Court had jurisdiction to adjourn the petition into Chambers under sec. 27 of 15 & 16 Vict., c. 80.—*Re Moate's Trust*, L.R. 22 Ch. D. 635; 31 W.R. 497.

(iii.) **Ch. Div. C. J.**—*Pleading No Defence—Infant Defendant—Motion for Judgment—Ord 19, r. 17; 29, r. 10; 40, r. 1.*—In an action for sale in lieu of partition the only defendant was an infant. No defence was put in, and plaintiffs moved for judgment, and supported the motion by affidavits verifying the statement of claim. The guardian *ad litem* did not object to the proposed judgment: *Held* that plaintiffs had taken the proper course, and that no notice of trial need be given.—*Fitzwater* v. *Waterhouse*, 52 L.J. Ch. 83.

(iv.) **Ch. Div. F. J.**—*Receiver—Mortgage of Undivided Share.*—A receiver may be appointed over the whole of a property at the instance of a mortgagee of an undivided share—*Sumsion* v. *Crutwell*, 31 W R. 399.

(v.) **Q. B. Div.**—*Receiver.—Recovery of Land—Landlord and Tenant.*—In an action for recovery of land by a landlord against his tenant under a proviso for re-entry for breach of covenants in the lease, a receiver of rents and profits pending the trial may be appointed on plaintiff's application.—*Gwatkin* v. *Bird*, 52 L.J. Q.B. 263.

(vi.) **Q. B. Div.**—*Reference—Application to Set Aside—Judicature Act, 1873, ss. 56—58.*—Application to set aside the findings of a referee appointed under sec. 57 of Judicature Act, 1873, to try the issues of fact in an action and report to the judge making the order, must be made to a divisional Court, and not to the judge—*Cooke* v. *Newcastle and Gateshead Waterworks Co.*, L.R. 10 Q B.D. 332.

(vii.) **Ch. Div. F. J.**—*Service of Pleadings—Order for Discovery—Attachment—Ord. 31, r. 21.*—An order was made in an action that defendant should, within four days after service of the order, produce on oath for inspection all deeds and writings in his possession or power relating to the subject-matter of the action: *Held* that service of this order on defendant's solicitor was sufficient service on which to found an application to attach defendant for disobedience.—*Joy* v. *Hadley*, L.R. 22 Ch. D. 571; 47 L.T., 615; 31 W.R. 519.

(viii.) **Ch. Div. F. J.**—*Service of Pleadings—Substituted Service—Notice of Motion—Ord. 9, r. 2.*—Service of a writ of summons together with notice of motion, where defendant had left his home and could not be found, and defendant's wife had gone to reside with her relations, was directed to be made by serving the writ and notice on the wife, leaving copies at defendant's house, and advertising in local papers.—*Mellows* v. *Bannister*, 31 W.R. 238.

(i.) **C. A.**—*Special Case—Mistake of Fact in.*—Where a special case is stated in an action and a decision given on it under a mistake of fact, the special case cannot be amended; but the Court is not bound by that decision, unless it has been adopted in subsequent orders, but may direct the action to go on to trial, and direct inquiries to ascertain the real facts. —*Tomlin* v. *Underhay*, L.R. 22 Ch. D. 495.

Principal & Agent:—

(ii.) **Q. B. Div.**—*Gaming—Employing Agent to Bet—8 & 9 Vict., c.* 109, *s.* 18.—The employment of an agent to make a bet in his own name on behalf of his principal implies an authority to pay the bet if lost, and the agent may recover from his principal the amount so paid notwithstanding 8 & 9 *Vict., c.* 109, *s.* 18—*Read* v. *Anderson*, L.R. 10 Q.B.D. 100; 52 L.J. Q.B. 214: 48 L.T. 74; 31 W.R. 453.

Probate:—

(iii.) **P. D. A. Div.**—*Codicil—Appointment of Additional Executor by.*—Testator appointed A., B, C. and D., executors by his will, and A. and E. joint executors by his codicil: *Held* that the appointment by the codicil did not revoke the appointment by the will; and A. having died and B., C. and E. having renounced, probate was granted to D.—*In the goods of Elmsley*, 48 L.T. 125.

(iv) **P. D. A. Div.**—*Codicil—List of Legacies—Incorporation.*—Testator in a codicil referred to one gift as being contained in a list of gifts which he had previously deposited with his brother: *Held* that the whole list was incorporated by the reference in the codicil.—*In the goods of Daniell*, L.R. 8 P.D. 14; 52 L.J. P.D.A. 23; 48 L.T. 12¼; 31 W.R. 248.

(v.) **P. D. A. Div.**—*Erasures—Extrinsic Evidence.*—Where erasures are found in a will after testator's death, the Court can hear evidence to show under what circumstances they were made, and if it appear that they were made after execution, and not with the intention to revoke, may order the original words to be restored.—*Sturton* v. *Whellock*, 48 L.T. 237; 31 W.R. 382.

(vi.) **P. D. A. Div.**—*Signature of Will—At Foot or End.*—Testatrix left a will which extended over to the third page of a sheet of foolscap. The signatures of herself and attesting witnesses were at the bottom of the first page; but she also signed at the end of the second page in their presence and before execution. The Court granted probate of the first two pages.—*In the goods of Wrey*, 31 W.R. 476.

Public Health:—

(vii.) **Q. B. Div.**—*Nuisance—Accumulation*—38 & 39 *Vict., c.* 55, *s.* 91 (4). —It is not necessary, in order to constitute an offence under sec. 91, sub-sec. 4, of Public Health Act, 1875, that the accumulation in question should be injurious to health as well as a nuisance.—*Bishop Auckland Local Board* v. *Bishop Auckland Iron Co.*, L.R. 10 Q.B.D. 138; 52 L.J. M.C. 38; 48 L.T. 223; 31 W.R. 288.

Railway:—

(viii.) **C. A.**—*Appointment of Receiver—Proper Outgoings—Rights of Debenture-Holders*—30 & 31 *Vict., c.* 127, *ss.* 4, 23.—Where a receiver of a railway company has been appointed under sec. 4 of Railway Companies Act, 1867, the priority of debenture-holders secured by sec. 23 of that Act is subject to the provisions in the 4th section, by which moneys in the hands of the receiver are applicable first in paying working expenses and proper outgoings.—*Re Cornwall Minerals Rail. Co.*, 48 L.T. 41.

(i.) **C. A.**—*Carrier—Liability—Alternative Rates*—B., on sending some fish by defendant railway company, signed a "risk note" by which the company were to be free from all liability for loss or damage by delay in transit or from whatever cause arising, and the rates charged were to be one-fifth lower than the ordinary rate. The company, as B. knew, carried goods at the ordinary rate without any condition respecting liability: *Held* that the terms as to exemption contained in the risk note were unreasonable and not binding on B.—*Brown* v. *Manchester, Sheffield and Lincolnshire Rail. Co.*, L.R. 10 Q.B.D. 250; 52 L.J. Q.B. 132; 31 W.R. 491.

(ii.) **Q. B. Div.**—*Compulsory Purchase—Sale of Superfluous Land—Mines—Right to Support*—8 *Vict.*, c 18, s. 127—8 *& 9 Vict.*, c. 20, *ss.* 77–81.—Where a railway company has compulsorily purchased land with mines subjacent thereto, and subsequently sells a part of it as superfluous land, the purchaser acquires the right of subjacent support for his surface against the owner of the mines.—*Pountney* v. *Clayton*, 47 L.T. 731; 31 W.R. 501.

(iii.) **C. A.**—*Compulsory Purchase—Special Act—Right to Cross Line of Another Company*—8 *Vict.*, *c.* 18, *s.* 16.—The S. railway company's special Act, which incorporated the Lands Clauses Act, 1845, empowered the company to cross the line of the G. company by a bridge and tunnel, and for that purpose to purchase and take an easement or right of using in perpetuity such part of the land of the G. company as the S. company were authorized to enter upon for the purpose of constructing the bridge and tunnel; and the Act also contained an arbitration clause in case of dispute between the companies. *Held* that the acquisition of the S. company of the right of crossing the G company's line was not a compulsory taking of land within sec. 16 of Lands Clauses Act, 1845, and that the arbitration clause in the Company's Act was in substitution for the machinery of the Lands Clauses Act for assessing compensation.—*Great Western Rail. Co.* v. *Swindon and Cheltenham Rail. Co.*, 47 L.T. 709; 31 W R. 479.

(iv) **Q. B. Div.**—*Through Rate—Right to Apply for—Through Traffic*—36 *&* 37 *Vict*, c. 48, s. 11.—A railway company applied under sec. 11 of Railways Regulation Act, 1873, to the Commissioners for an order, allowing through rates for traffic over their line between termini, both of which were situated on the lines of other companies. The applicants did not work their own railway, but maintained and managed their line: *Held* that they were entitled to a through rate in respect of traffic carried over their line by the companies on whose lines the termini were situated.—*Great Western Rail. Co.* v. *Central Wales Rail. Co.*, L.R. 10 Q B.D. 231; 52 L J. Q B. 211; 48 L.T. 234, 315; 31 W.R. 321.

Revenue:—

(v.) **Q. B. Div.**—*Beer—Brewer not for Sale—House not exceeding* £10 *Annual Value*—43 *&* 44 *Vict.*, c. 20, *ss.* 32, 33.—A brewer, not for sale, occupied two houses, one below and the other above £10 annual value. He took out a license for both, but did not make the entries required of a brewer not for sale and chargeable to duty before brewing in the house of lower value: *Held* that the case did not come within the proviso in sec. 33 of Inland Revenue Act, 1880, exempting from duty a brewer not for sale the annual value of whose house did not exceed £10.—*Tippett* v. *Hart*, 52 L J M.C. 41; 48 L.T. 319.

(vi.) **Q. B. Div.**—*Legacy Duty—Property not reduced to Money*—36 *Geo. III.*, c. 52, s. 22.—In 36 Geo. III., c. 52, s. 22, the words "not reduced into money," should be read, "not reduced into money during the administration."—*Attorney-General* v. *Dardier*, 31 W.R. 499.

(i.) **C. A.**—*Property Tax—Assize Courts*—56 *Vict.*, c. 35.—Property Tax under Schedules A. and B. of the Income Tax Acts is not payable in respect of a building consisting partly of a county police station, but mainly of Assize Courts used only by the judges on circuit, the justices in petty and quarter sessions, and the county court judge.—*Coomber* v. *Berkshire Justices*, L.R. 10 Q.B.D. 267; 52 L.J. Q.B. 81; 47 L.T. 687; 31 W.R. 356.

(ii.) **Ch. Div. V. C. B.**—*Succession Duty—Reversionary Interest*—16 & 17 *Vict.*, c. 51, ss. 10, 14—44 & 45 *Vict.*, c. 12, s. 41.—A fund was held on trust for H. for life, and then for his son absolutely. The son died and H. took out letters of administration to him as next-of-kin, and paid duty at 3 per cent on the value of the son's interest under the Customs Act of 1881: *Held* that by virtue of sec. 41 of that Act, the one per cent. succession duty to which the son would have been liable if he had survived H. under the Succession Duty Act, 1853, was not payable by H.—*Re Haygarth's Trusts*, L.R. 22, Ch. D. 545; 48 L.T. 24; 31 W.R. 316.

Settlement:—

(iii.) **Ch. Div. F. J.**—*Enlargement of Long Term into Fee Simple—Rent having no Money Value—Conveyancing Act*, 1881, s. 65.—The words "rent having no money value" in sec. 65 of Conveyancing Act, 1881, mean a rent which, when received, is of no money value.—*Re Smith and Stott*, 31 W. 411.

(iv.) **C. A.**—*Maintenance—Power or Trust—Discretion to apply Income for.*—By a marriage settlement, personalty was settled on trust for the wife for life, and after her death for her children, and it was declared that the trustees should, after her death, apply the whole or such part of the income as they should think fit, of the expectant share of any child for or towards its maintenance. After the wife's death the trustees paid the whole income to the husband during the infancy of the only child of the marriage, without exercising any discretion as to its application to his maintenance: *Held* that as no discretion had been exercised, the estate of the husband was liable to repay the whole amount of the income received.—*Wilson* v. *Turner*, L.R. 22 Ch. D. 521; 52 L.J. Ch. 270; 31 W.R. 438.

(v.) **Ch. Div. P. J**—*Sale by Tenant for Life—Trust for Sale on Death of—Assignment of Reversion*—45 & 46 *Vict.*, c. 38, ss. 2, 3, 38, 45.—The power of sale of settled property given to the tenant for life by sec. 3 of the Settled Land Act, 1882, cannot be restricted on the ground that before the passing of the Act the reversion had been assigned to a purchaser for value. Trustees with a power to sell settled land on the death of the tenant for life are not trustees with a power of sale within the meaning of sec. 2, sub-sec. 8 of the Act, and no sale can be effected by the tenant for life until such trustees have been appointed.—*Wheelwright* v. *Walker*, 52 L.J Ch. 274; 48 L.T. 70; 31 W.R. 363.

(vi.) **Ch. Div. F. J.**—*Settled Estate—Infant—Sale*—44 & 45 *Vict.*, c. 41, s. 41.—Real estate to which an infant was entitled contingently on his attaining twenty-one was ordered to be sold under Conveyancing Act, 1881, sec. 41.—*Liddell* v. *Liddell*, 52 L.J. Ch. 207; 31 W.R. 238.

(vii.) **Ch. Div. Pollock, B.**—*Trustee Carrying on Business—Advances by—Creditor of Trustee.*—By a marriage settlement a lunatic asylum was assigned to trustees on trust to sell at the request of the husband and wife, but to allow the husband to carry on the business of the asylum without paying rent, but paying certain premiums. The husband became bankrupt, and the trustee of the settlement entered into possession of the asylum and carried it on until it was sold: *Held* that the

trustee could not have recovered moneys advanced by him for the purposes of the asylum from the trust fund, and therefore a tradesman who had supplied the trustee with goods for the use of the asylum could not recover payment out of that fund.—*Strickland* v. *Symons*, L.R. 22 Ch. D. 666; 48 L.T. 188.

Ship:—

(i.) **C. A.**—*Bill of Lading—Excepted Perils—Negligence—Collision—Ship Registered in Foreign Country—Judicature Act*, 1873, *s*. 25 (9).—Plaintiff shipped goods on board defendant's vessel, the *C.*, under a bill of lading containing exceptions of collision, and accidents, loss, or damage from any act, neglect, or default of the pilot, master, or mariners, or other the defendant's servants, in navigating the ship. The *C.* came into collision with another vessel of defendant's, the *A.*, the collision being due to negligence for which the *A.* was mainly, and the *C.* in part, in fault. Both ships were registered in Holland: *Held* that the contract in the bill of lading was governed by English, and not Dutch law; that defendants were not liable for a breach of contract to carry safely; but that they were liable in tort for the *A.*'s negligence, and that such liability, by reason of sec. 25, sub-sec. 9, of Judicature Act, 1873, extended only to one-half of plaintiff's loss. *Chartered Mercantile Bank of India* v. *Netherlands India Steam Co.*, 52 L.J. Q.B. 220; 31 W.R. 445.

(ii.) **P. D. A. Div.**—*Collision—Lights—Speed.*—A ship approaching another vessel so as to involve risk of collision may be justified in keeping her engines going full speed ahead when she is placed in a position of danger by the neglect of the other vessel to exhibit the proper lights.—*The Benares*, 48 L.T. 127.

(iii.) **C. A.**—*Collision—River Tees Navigation—Maximum Speed.*—In Rule 22 of Rules for Navigation of River Tees, maximum speed means speed over the ground, and not through the water.—*The R. L. Alston*, L.R. 8 P.D. 5.

(iv.) **P. D. A. Div.**—*Foreign Ship—Wages Action—Jurisdiction.*—In an action for wages and wrongful dismissal brought by persons domiciled in England against a foreign ship in which they had served under articles signed in a port of the country to which the ship belonged, where they alleged imprisonment, hardship and ill-treatment, the Court refused to exercise its jurisdiction against the protest of the consul alleging that, by the law of the ship's country, all disputes relating to such matters were to be referred to and decided by the tribunals or consuls of the country.—*The Leon XIII.*, 47 L.T. 659.

(v.) **P. D. A. Div.**—*Master's Disbursements—Lien—Necessaries—Laches—24 Vict., c.* 10, *s.* 10.—A master has, under sec. 10 of Admiralty Court Act, 1861, a maritime lien for his disbursements; and a liability to pay a debt incurred for necessaries confers the same rights on the master as an actual payment by him when the *res* is in the hands of the Court. Judgment having been recovered against a master on bills of exchange which he gave for necessaries in July, 1881, he issued a writ against the ship in November, 1881, and the owners' solicitors then gave an undertaking to put in bail: *Held* that there was no such laches as would prevent plaintiff from maintaining the action.—*The Fairport*, 52 L.J. P.D.A. 21.

(vi.) **P. D. A. Div.**—*Negligence—Exemption from Liability—Loss of Life.*—The ticket of a passenger by defendants' steamer contained a notice that defendants would not be responsible for any loss or damage arising from perils of the sea, or from machinery, or from any act or default whatsoever of the pilot, master, or mariners: *Held* that defendants were

exempted from liability for loss of life of a passenger by negligence of the defendants' servants in a collision.—*Haigh v. Royal Mail Steam Packet Co.*, 48 L.T. 267.

(i.) **P. D. A. Div.**—*Negligence—Exemption from Liability—Towage.*—The owners of a tug gave notice that they would not be answerable for any loss occasioned to any tow by negligence or default of them or their servants, and this notice was brought to the knowledge of a tow that was lost through the tug taking more vessels than she could properly manage: *Held* that the owners were exempt from liability.—*The United Service*, 52 L.J. P.D.A. 18.

Solicitor :—

(ii.) **C. A.**—*Costs—Short-hand Notes—Taxation.*—Where a solicitor proposes to incur unusual expenses in an action, such as taking short-hand notes of evidence, it is his duty to point out to his client that the expenses so incurred will not be allowed to him on party and party taxation if he is successful—*Re Blyth and Fanshawe*, L R 10 Q.B.D. 207; 52 L.J. Q.B. 186; 47 L.T. 610; 31 W.R. 283.

Stolen Goods, Property in :—

(iii.) **Q. B. Div.**—*Negotiable Instrument—Restitution—Bonâ-fide Holder for Value—24 & 25 Vict., c. 96, s. 100.*—The owner of a negotiable instrument which has been stolen has no title to it as against a *bonâ-fide* holder for value, although he has prosecuted the thief to conviction.—*Chichester v. Hill*, 52 L.J. Q.B. 160; 48 L.T. 364; 31 W.R. 245.

Trade Mark :—

(iv.) **H. L.**—*Trade Name—Infringement—Expired Patent.*—Defendant sold sewing machines in England manufactured by a Germany company, and described them in his circulars as being on the "Singer" system, with explanations showing that the machines were made in Germany according to expired patents of the plaintiff company: *Held* that plaintiffs were not entitled to an injunction.—*Singer Manufacturing Co. v. Loog*, L.R. 8 App. 15; 48 L.T. 3; 31 W.R. 325.

(v.) **Ch. Div. P. J.**—*Trade Name -Mortgagee of Goodwill—Right to Injunction.*—The mortgagee of the goodwill of a business and the right to use a trade name, who has never used the name, and does not allege that he intends to do so, cannot obtain an injunction to restrain persons claiming under the mortgagor from carrying on the business under the name.—*Beazley v. Soares*, L.R. 22 Ch. D. 660; 52 L.J. Ch. 201.

Trustee :—

(vi.) **C. A.**—*Breach of Trust—Investment—Cheque payable to Stockbroker—Loss of Trust Fund.*—A trustee about to invest trust funds instructed a stockbroker to purchase stocks, and the broker produced a bought note, irregularly drawn, but purporting to be a contract for the purchase of certain corporation securities, and showing that the contract was with the corporation. The stock might have been purchased from the corporation direct. The trustee gave the broker a cheque for the amount payable for the stock, and subsequently the broker absconded; and no securities were received by the trustee, and the money was lost: *Held* that the trustee was not liable.—*Speight v. Gaunt*, 48 L.T. 279; 31 W.R. 401.

(vii.) **Ch. Div. F. J.**—*New Trustee—23 & 24 Vict., c. 145, s. 27.—Power of Trustee to Compromise.*—The survivor of two trustees appointed by a will made since 1860, and which contained no power to appoint new

trustees, appointed, on retiring, testator's widow sole trustee: *Held* that the appointment, though irregular, was valid under sec. 27 of Lord Cranworth's Act. The executrix and sole trustee of a deceased partner and the surviving partner sold the partnership property to a company for cash, shares and debentures, under an arrangement by which the considerations received by the executrix and the surviving partner respectively were unequal: *Held* that the sale was a compromise within the power of the executrix and not a breach of trust.—*West of England Bank* v. *Murch*, 31 W.R. 467.

(i.) **C. A.**—*New Trustee—Appointment after Administration Decree—Sanction of Court.*—Where a new trustee is to be appointed after an administration decree, the appointment must be made by the donee of the power for the purpose, but subject to the sanction of the Court.—*Eastwood* v. *Clarke*, 31 W.R. 417.

(ii.) **C. A.**—*New Trustee—Lunatic Trustee—Trustee Act*, 1850, *s.* 32.—Where one of several trustees becomes of unsound mind, the Court will not, on petition, re-appoint the other trustees in place of themselves and the lunatic.—*Re Aston*, 48 L.T. 195.

(iii.) **Ch. Div. C. J.**—*New Trustee—Power to Appoint—Personal Incapacity—Trustee Act*, 1850, *s.* 32.—The Court has jurisdiction, under sec. 32 of Trustee Act, 1850, to appoint a new trustee in the place of a trustee who has become incapable of acting through age and infirmity.—*Re Lemann's Trusts*, L.R. 22 Ch. D. 633; 31 W.R. 520.

(iv.) **C. A.**—*Right to Transfer of Stock—Stock Standing in name of Testator—One Executor Lunatic—Trustee Act*, 1850, *s* 5.—Where one of three executors of the surviving executor of a testator was of unsound mind, an order was made under sec. 5 of Trustee Act, 1850, giving the right to transfer a sum of stock belonging to the estate of the original testator, though the stock still continued standing in his name.—*Re Wacher*, L.R. 22 Ch. D. 535.

(v.) **Ch. Div. P. J.**—*Trustee and Cestuis que-trust—Conflicting Interests—Benefits acquired by Trustee.*—A trustee will not be permitted to place himself in a position in which his personal interests will conflict with those of the trust, and if he does place himself in such a position, and acquires benefits by so doing, these benefits will be transferred to the trust estate.—*Bennett* v. *Gas Light and Coke Company*, 52 L.J. Ch. 98; 48 L.T. 156.

(vi.) **Ch. Div. C. J.**—*Vesting Order—Copyholds—Trustee Act*, 1850, *ss.* 15, 28.—The Court has power to make an order vesting copyholds in the person beneficially entitled, when a bare trustee thereof has died intestate and without an heir.—*Re Godfrey's Trusts*, 31 W.R. 426.

Vendor and Purchaser :—

(vii.) **Ch. Div. K. J.**—*Sale by Trustee—Payment of Purchase-Money to Solicitor—44 & 45 Vict., c.* 41, *s.* 56.—Section 56 of Conveyancing Act, 1881, applies to the case of a sale by trustees as much as to that of a sale by an ordinary vendor.—*Re Bellamy*, 52 L J. Ch. 89.

(viii.) **Ch. Div. V. C. B.**—*Specific Performance—Misrepresentation by Agent.*—An agent commissioned by a vendor to find a purchaser has authority to describe the property, and to state any fact or circumstance which may affect the value, so as to bind the purchaser.—*Mullens* v. *Miller*, L.R. 22 Ch. D. 194; 48 L.T. 103.

(i.) **Ch. Div. Pollock, B.**—*Specific Performance—Misrepresentation—Parol Evidence to Explain Contract.*—In negotiations for sale of a property by R. to S., the latter asked R. whether he had ever put the property into the hands of an agent to sell for less money than he was then asking, and R. falsely answered "No:" *Held*, a material misrepresentation so as to deprive R. of a right to specific performance. A contract of sale, provided that part of the purchase-money was to be paid in freehold equities: *Held* that a contemporary document, written by one of the parties, was admissible as parol evidence to explain the meaning of freehold equities.—*Roots* v. *Snelling*, 48 L.T. 216

(ii.) **Ch. Div. F. J.**—*Specific Performance—Restrictive Covenant.*—Land was granted in fee in consideration of a rent-charge, and the deed of grant contained a covenant to build houses on the land, the rent of which should be double the value of the rent reserved by the deed, without limiting any time within which such building was to be required: *Held* that the covenant was unusually restrictive; and *semble*, that though the covenant did not run with the land, the liability to allow others to enter and fulfil the covenant did.—*Andrew* v. *Aitkin*, L.R. 22 Ch. D. 218; 52 L.J. Ch. 294; 48 L.T. 148; 31 W.R. 425.

(iii.) **Ch. Div. F. J.**—*Summons under Vendor and Purchaser Act—Return of Deposit—Jurisdiction.*—The Court has jurisdiction on a summons under sec. 9 of Vendor and Purchasor Act, 1874, to order the return of the purchaser's deposit with interest.—*Re Smith and Stott*, 31 W.R. 411.

Voluntary Gift:—

(iv **C. A.**—*Gift by Husband to Wife—Corroborative Evidence.*—After W.'s death his widower claimed to retain certain plate on the ground that he had given it to her: *Held* that the fact that the plate had been taken by W. to and left at a house in Paris which belonged to the widow was no corroboration of her evidence of a gift to her by W., and therefore that her claim must fail.—*Wynne-Finch* v. *Wynne-Finch*, 48 L.T. 129.

Water:—

(v.) **Q. B. Div.**—*Water Company—Duty to Supply Pure Water—Water Poisoned in Service Pipe*—10 *&* 11 *Vict.*, *c.* 17, *s.* 35.—Where a water company, bound to keep the water in its mains or pipes pure and wholesome, does so and uses the best possible means for connecting the houses of the consumers with its mains, it is not liable for injuries sustained by a consumer through the water becoming contaminated in its passage through the connecting medium with the consumer's premises.—*Milnes* v. *Huddersfield Corporation*, L.R. 10 Q.B.D. 124; 52 L.J. Q.B. 64; 47 L.T. 697.

Will:—

(vi.) **Ch. Div. K. J.**—*Construction—Annuity free from Deductions—Income Tax.*—Testator directed his trustees to stand possessed of his residuary personalty upon trust to pay out of the income to his wife the clear yearly sum of £1,000 for life, free from all deductions and abatement whatsoever: *Held* that the annuity was not given free of income tax.—*Gleadow* v. *Leatham*, L.R. 22 Ch. D. 269; 52 L.J. Ch. 102; 48 L.T. 264; 31 W.R. 269.

(vii.) **Ch. Div. F. J.**—*Construction—Condition in Restraint of Marriage.*—The principle that a testamentary gift over operating as a general restraint upon marriage is void as against public policy, applies to a gift over operating to reduce the amount of a legacy as much as to a gift over of the entire legacy.—*Pickard* v. *Holroyd*, 48 L.T. 212.

(i.) **C. A.**—*Construction—Erroneous Recital—Advance—Account.*—Testator, having by his will given £7,000 upon trusts for the benefit of a married daughter and her children, by a codicil, after reciting that the daughter's husband owed him £5,000, directed that unless that sum at least should be repaid before his decease, the sum of £5,000 should be taken in part payment and reduction of the legacy of £7,000: *Held* that the legatee was entitled to show that the recital in the will was erroneous, and that less than £5,000 was owing by him to the testator.—*Tomlin* v. *Underhay*, L.R. 22 Ch. D. 495.

(ii.) **Ch. Div. F. J.**—*Construction—Estate and Effects at M.—Chose in Action—Contingent Bequest—Intermediate Income—Gift partly onerous.*—Testator gave to W. all his estate and effects in Mauritius if he should attain the age of twenty-five or die under that age leaving male issue, with remainders over: *Held* that debts due from debtors in Mauritius passed under the gift; and that the income accruing before the vesting of the gift fell into the residue. Part of the property consisted of onerous leaseholds: *Held* that the legatee could not disclaim these and take the rest.—*Guthrie* v. *Walrond*, L.R. 22 Ch. D. 573; 52 L.J. Ch. 165; 47 L.T. 614; 31 W.R. 285.

(iii.) **Ch. Div. F. J.**—*Construction—Gift over on Death—Legatee and Testator dying simultaneously.*—Testator left legacies to three persons, and if any of them died their share was to go to the others. One of the legatees and the testator died at the same instant: *Held* that the legacy of this legatee fell into the residue.—*Elliott* v. *Smith*, L.R. 22 Ch. D. 236; 52 L.J. Ch. 222; 48 L.T. 27; 31 W.R. 336.

(iv.) **Ch. Div. P. J.**—*Construction—Gift to Daughter—Direction to Settle—Death before Testator—Wills Act, s.* 33.—Testator gave a share of his residue upon trust for his daughter B., and directed if she should survive him, her share should be deemed to be a part of the funds comprised in her marriage settlement, and subject to the trusts thereof. B. died in testator's lifetime, leaving children who survived him: *Held* that, as by the operation of sec. 33 of the Wills Act, B. must be taken to have survived the testator, her share must be paid to the trustees of her settlement.—*Re Hone's Trusts*, L.R. 22 Ch. D. 663; 52 L.J. Ch. 295; 48 L.T. 266; 31 W.R. 379.

(v.) **Ch. Div. F. J.**—*Construction—Gift to Husband of Daughter—Divorce.*—Testator devised property to his daughter for life, and after her death in trust for any husband with whom she might intermarry, if he should survive her, for his life. The daughter married defendant, and was divorced from him on his petition, and he married again and survived her: *Held* that he was entitled to the gift under the will.—*Bullmore* v. *Wynter*, L.R. 22 Ch. D. 619; 48 L.T. 309; 31 W.R. 396.

(vi.) **Ch. Div. F. J.**—*Construction—Gift to Widow—Nullity of Marriage.*—Testator gave his wife a legacy of £200 and an annuity so long as she should continue his widow, or at her option a legacy of £2,000 in lieu of the annuity. The person described as wife obtained a declaration of nullity of marriage, subsequently to the date of the will: *Held* that she was entitled to the legacy of £200, but not to the annuity or the £2,000.—*Boddington* v. *Clariat*, L.R. 22 Ch. D. 596; 52 L.J. Ch. 239; 48 L.T. 110; 31 W.R. 449.

(vii.) **C. A.**—*Construction—Inconsistent Gifts—Erroneous Recital in Codicil.*—Decision of Fry, J. (see vi., p. 18), affirmed.—*Haggard* v. *Haggard*, 48 L.T. 172; 31 W.R. 257.

(i.) **Ch. Div. F. J.**—*Construction—Power of Appointment—Election.*—Testator having power to appoint among children of his first marriage, purported to appoint, subject to charges, partly in favour of the children of the second marriage, and gave benefits out of his own property to children of the first marriage: *Held* that these latter were put to their election.—*White* v. *White*, L.R. 22 Ch. D. 555; 52 L.J. Ch. 232; 48 L.T. 151; 31 W.R. 451.

(ii.) **Ch. Div. K. J.**—*Construction—Residuary Gift—Legacies substituted by Codicil.*—Testator gave legacies of £70,000 and £80,000 respectively to two legatees, and directed his residuary estate to be divided between them *pro ratâ* in proportion to the amount of their legacies. By a codicil he revoked the gifts of the legacies and in substitution gave legacies of £80.000 and £140,000: *Held* that the residue was to be divided between the legatees in the proportions of the legacies bequeathed by the codicil.—*Courtauld* v. *Cawston*, 47 L.T. 647.

(iii.) **C. A.**—*Power to bequeath—Customs Annuity and Benevolent Fund.*—P., a subscriber to the Customs Annuity and Benevolent Fund for the capital sum of £1,000, died a widower, leaving three children, and bequeathed his insurance in the fund to X., who was no relation, and was never admitted as a nominee by the directors: *Held* that P.'s children were entitled to the insurance moneys to the exclusion of X.—*Re Phillips' Insurance*, 48 L.T. 81; 31 W.R. 511.

(iv.) **Ch. Div. C. J.**—*Specific Legacy—Ademption—Lunacy of Testator—Sale in Lunacy.*—16 & 17 *Vict.*, c. 70, ss. 118, 119.—Testator having specifically bequeathed G. railway stock, was subsequently found lunatic, and the stock was sold on the lunacy, and the proceeds invested in consols, and carried to a separate account: *Held* that the specific legacy was adeemed.—*Freer* v. *Freer*, L.R. 22 Ch. D. 622; 31 W.R. 426.

